

RULE MAKING ACTIVITIES

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

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

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

Affordable Housing Corporation

NOTICE OF ADOPTION

Affordable Housing Corporation Program Regulations

I.D. No. AHC-01-06-00001-A

Filing No. 341

Filing date: March 22, 2006

Effective date: April 12, 2006

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

Action taken: Amendment of sections 2160.2, 2162.1, 2163.1 and 2164.5 of Title 21 NYCRR.

Statutory authority: Private Housing Finance Law, section 1113(1)

Subject: Affordable housing corporation program regulations.

Purpose: To clarify existing language in the regulations and bring the regulations into compliance with updates in the Private Housing Finance Law.

Text or summary was published in the notice of proposed rule making, I.D. No. AHC-01-06-00001-P, Issue of January 4, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Banking Department

NOTICE OF ADOPTION

Maximum Fees Charged by Licensed Check Cashers

I.D. No. BNK-01-06-00002-A

Filing No. 373

Filing date: March 28, 2006

Effective date: April 14, 2006

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

Action taken: Amendment of section 400.12 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 371 and 372

Subject: Maximum fee charged by licensed check cashers for cashing checks, drafts or money orders made payable to natural persons.

Purpose: To increase the base maximum percentum fee that may be charged by licensed check cashers against the face amount of a check, draft or money order, in order to account for the licensees' increased costs caused by the Department's initial imposition of a general assessment fee in 2005 upon such licensees to cover the Department's cost of the licensees' regulatory supervision.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-10-06-00002-P, Issue of January 4, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF ADOPTION

Probationary Terms for Positions of University Police Officer 1 and University Police Officer 1 (Spanish Language)

I.D. No. CVS-51-05-00008-A
Filing No. 363
Filing date: March 24, 20006
Effective date: April 12, 2006

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

Action taken: Addition of section 4.5(b)(2)(viii) to 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 appointments from promotion eligible lists to positions of University Police Officer 1 and University Police Officer 1 (Spanish Language) of not 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-51-05-00008-P, Issue of December 21, 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, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-05-00004-A
Filing No. 358
Filing date: March 24, 2006
Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00004-P, Issue of December 28, 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) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-05-00005-A
Filing No. 362
Filing date: March 24, 2006
Effective date: April 12, 2006

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-52-05-00005-P, Issue of December 28, 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) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-05-00006-A
Filing No. 354
Filing date: March 24, 2006
Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00006-P, Issue of December 28, 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) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-05-00007-A
Filing No. 360
Filing date: March 24, 2006
Effective date: April 12, 2006

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00007-P, Issue of December 28, 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) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-52-05-00008-A
Filing No. 352
Filing date: March 24, 2006
Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00008-P, Issue of December 28, 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) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

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

Filing No. 353

Filing date: March 24, 2006

Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00009-P, Issue of December 28, 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) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

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

Filing No. 356

Filing date: March 24, 2006

Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00010-P, Issue of December 28, 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) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

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

Filing No. 357

Filing date: March 24, 2006

Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00011-P, Issue of December 28, 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) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

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

Filing No. 355

Filing date: March 24, 2006

Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00012-P, Issue of December 28, 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) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

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

Filing No. 361

Filing date: March 24, 2006

Effective date: April 12, 2006

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-52-05-00013-P, Issue of December 28, 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) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

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

Filing No. 359

Filing date: March 24, 2006

Effective date: April 12, 2006

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

Action taken: Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-05-06-00014-P, Issue of December 28, 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) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-06-00004-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by increasing the number of positions of Special Assistant from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-06-00005-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Executive Department and the Department of State.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of the Governor," by decreasing the number of positions of Confidential Stenographer from 56 to 55; and, in the Department of State, by adding thereto the position of Confidential Stenographer.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-06-00006-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance under the subheading "Division of Tax Appeals," by decreasing the number of positions of Assistant Counsel from 3 to 2 and by adding thereto the position of Special Assistant.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-06-00007-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by adding thereto the subheading "Division of Military and Naval Affairs," and the positions of Curator 2 (DMNA) (1) and Manager, NYS Military Museum (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-15-06-00008-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Real Property Services," by adding thereto the position of Director of Real Property Tax Research and Complex Appraisal (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-15-06-00009-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by decreasing the number of positions of Community Outreach Specialist 2 from 4 to 3 and by increasing the number of positions of Community Outreach Aide from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

**State Consumer Protection
Board**

NOTICE OF ADOPTION

Face to Face Meeting Exception in the Do Not Call Legislation

I.D. No. CPR-50-05-00009-A

Filing No. 340

Filing date: March 22, 2006

Effective date: April 12, 2006

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

Action taken: Amendment of section 4603.2(a) of Title 21 NYCRR.

Statutory authority: Executive Law, section 553(1)(d), General Business Law, section 399-z, and L. 2003, ch. 124

Subject: Face to Face meeting exception in the Do Not Call law.

Purpose: To bring the rules into parity with recently amended General Business Law, section 399-z (1)(j).

Text of final rule: § 4603.2 Exceptions.

(a) "Unsolicited telemarketing sales call" means any telemarketing sales call other than a call made: (1) in response to an express written or verbal request of the specific customer called; (2) in connection with an established business relationship, which has not been terminated by either party[;] *unless such customer has stated to the telemarketer or the telemarketer's agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer;* or (3) to an existing customer, unless such customer has stated to the telemarketer or the telemarketer's agent that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer[;] [or (4) in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telemarketer or a meeting between the telemarketer and the customer].

Final rule as compared with last published rule: Non-substantive changes were made in the following sections, 4603.2 to add the word, "or" which constitutes a non-substantive change.

Text of rule and any required statements and analyses may be obtained from: Lisa Renee Harris, General Counsel, Consumer Protection Board, Five Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-2348, e-mail: Lisa.Harris@consumer.state.ny.us

Revised Job Impact Statement

1. Job Impact Exemption (JIE):

The proposed regulations with the non-substantive change of the addition of the word "or" does not change our original determination that this proposed rule should not have a substantial adverse impact, defined as a decrease of 100 jobs (SAPA § 201-a(6)(c)). The Board estimates that telemarketing firms should be able to comply with the proposed amendments using existing resources. Because it is evident from the nature of these amendments that they would have little impact on the number of jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required.

2. Job Impact Statement (JIS):

This requirement is not applicable. See the Job Impact Exemption section.

3. Job Impact Request for Assistance (JIRA):

This requirement is not applicable. See the Job Impact Exemption section.

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

EMERGENCY RULE MAKING

DNA Screening

I.D. No. COR-03-06-00011-E

Filing No. 369

Filing date: March 28, 2006

Effective date: March 28, 2006

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

Action taken: Addition of sections 1800.4(a)(3), 1900.4(c)(5) and 1950.3(a)(3) to Title 7 NYCRR.

Statutory authority: Correction Law, sections 2, 112, 855 and 867

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

Specific reasons underlying the finding of necessity: To facilitate inclusion in the State DNA Databank of DNA profiles which are voluntarily provided as a condition of an inmate's participation in certain community release programs.

Subject: DNA screening of Temporary Release, CASAT and Shock Incarceration Program applicants.

Purpose: To require Temporary Release, CASAT and Shock Incarceration Program applicants to provide DNA samples as a condition of participation in these voluntary programs.

Text of emergency rule: Add new paragraph (3) to subdivision (a) of section 1800.4, 7 NYCRR, as follows, and re-number existing paragraphs (3) and (4) to (4) and (5), respectively:

(3) *unless already provided, has agreed to provide a DNA sample for forensic analysis;*

Add new paragraph (5) to subdivision (c) of section 1900.4, 7 NYCRR, as follows, and re-number existing paragraphs (5) through (12) to (6) through (13), respectively:

(5) *Unless already provided, the inmate must agree to provide a DNA sample for forensic analysis.*

Add new paragraph (3) to subdivision (a) of section 1950.3, 7 NYCRR, as follows, and re-number existing paragraphs (3) through (5) to (4) through (6), respectively:

(3) *unless already provided, has agreed to provide a DNA sample for forensic analysis;*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. COR-03-06-00011-EP, Issue of January 18, 2006. The emergency rule will expire April 12, 2006.

Text of emergency 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

Regulatory Impact Statement

The New York State Department of Correctional Services (DOCS) seeks to add new paragraph (3) to section 1800.4(a), new paragraph (5) to section 1900.4(c) and new paragraph (3) to section 1950.3(a) of Title 7, NYCRR.

Statutory Authority:

Section 112 of the Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibility to make rules and regulations for the government of correctional facilities and programs for inmates.

Correction Law § 855(9) clearly establishes that it is a privilege to participate in a temporary release program. Correction Law § 867(5) clearly establishes that it is a privilege to participate in the shock incarceration program.

Correction Law § 855(4) requires that a temporary release program for a particular inmate applicant must be consistent with the safety of the community. Correction Law § 866(1) requires the commissioner to be guided by consideration for the safety of the community in promulgating

rules and regulations for the shock incarceration program. Correction Law § 867(2) requires the shock incarceration screening committee to determine if an inmate's participation in the shock incarceration program is consistent with the safety of the community.

Correction Law § 2(18) specifies that inmates may be placed in an alcohol and substance abuse treatment correctional annex for intensive alcohol and substance abuse treatment services (CASAT) if they have established eligibility or prospective eligibility for temporary release.

Legislative Objective:

The legislature established, as a matter of law, that inmate participation in either the shock incarceration program, the temporary release program or its subsidiary comprehensive alcohol and substance abuse treatment program is a privilege. Accordingly, the legislature intended the commissioner to craft rules and regulations limiting participation to inmates most worthy of the opportunities they provide and most likely to succeed.

The legislature further established, as a matter of law, that these programs be guided by consideration for the safety of the community inasmuch as successful inmate participants return to community living earlier than non-participants with similar sentences.

In view of the privileged status of program participants and the department's primary obligation to serve community safety, the department has concluded, consistent with public safety concerns voiced by the legislature, that technological advances such as DNA sampling and analysis be incorporated into the eligibility screening procedures used to determine which inmates are the most acceptable candidates.

Needs and Benefits:

The proposed amendments require a DNA sample from any inmate who wishes to voluntarily participate either in the temporary release program, the comprehensive alcohol and substances abuse treatment program (CASAT), or the shock incarceration program. These correlate with revisions to the regulations of the Division of Criminal Justice Services at § 6192.1 of Title 9, NYCRR, which expand the DNA Databank by creating a subject index to contain the DNA profiles of these program participants.

Inmates who participate in a temporary release program are afforded considerable liberty in a community setting. Similarly, inmates who successfully complete phase I of the CASAT program are then placed in a residential treatment facility program within the community. Finally, graduates of the shock incarceration program are released directly to the community. The incorporation of the DNA screening technology into the process for determining which inmates are eligible to participate in these programs represents a sound public protection measure. The Department anticipates that this will help to screen out from these programs any otherwise eligible inmate who may be connected to an unsolved homicide, rape or other serious crime, advancing the Department's obligation to enhance community safety and security.

Furthermore, it is anticipated that a DNA sample on file would aid law enforcement if an inmate were to commit a new crime after being released into the community, and, for this reason, may have a prospective deterrent effect. By the same token, a DNA sample on file might exonerate an inmate erroneously suspected of a crime and thereby alleviate public concern over his presence in the community.

The Department believes that these amendments will clearly reinforce the privileged status of these programs and will serve to enhance the safety of the community by helping to screen out those who may have undetected criminal liabilities and deter participants from future criminal activity.

Costs:

- a. To State government: None anticipated.
- b. To local governments: None. The proposed amendment does not apply to local governments.
- c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.
- d. Costs to the regulating agency for implementation and continued administration of the rule:

(i) Initial expenses: The Department will not incur significant initial expenses. The Department is only responsible for expenses related to the sampling procedure. Samples will be taken using an existing contract for medical sampling/testing.

(ii) Annual cost: The contractor takes the DNA sample via buccal swab at a cost of approximately \$5. The Department estimates that less than 2000 inmates will be sampled as a result of these amendments in the year 2006.

e. This cost assessment is based on information provided by the Department's research and medical staff.

Paperwork:

a. New reporting or application forms: A new form will be presented to each applicant for Temporary Release, CASAT or the Shock Incarceration Program informing them of the substance and basis for these amendments to the Department's regulations and asking them to indicate by signature whether they consent to provide a DNA sample.

b. Additions to existing reporting or application forms: None.

c. New or addition recordkeeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: Data indicating that an inmate has submitted a DNA sample in connection with an application for Temporary Release, CASAT or the Shock Incarceration Program will be added to the Department's database records.

Local Government Mandates:

There are no new mandates imposed upon local governments by this proposal. The proposed amendment does not apply to local governments.

Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

Alternatives:

These amendments correspond with revisions to the regulations of the Division of Criminal Justice Services at § 6192.1 of Title 9, NYCRR, which expand the DNA Databank by creating a subject index to contain the DNA profiles of voluntary applicants to the Temporary Release, CASAT and Shock Incarceration Programs. No significant alternatives have been considered or become apparent. The Department believes that these amendments will help to solve crime, deter future criminal activity, and provide an effective supervision tool for Department staff who oversee inmates in community settings.

Federal Standards:

There are no minimum standards of the Federal government for this of a similar subject area.

Compliance Schedule:

The Department of Correctional Services will achieve compliance with the proposed rule on January 3, 2006.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely requires inmate participants in certain voluntary correctional programs to submit a DNA sample for inclusion in a new subject index within the State's DNA Databank.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely requires inmate participants in certain voluntary correctional programs to submit a DNA sample for inclusion in a new subject index within the State's DNA Databank.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely requires inmate participants in certain voluntary correctional programs to submit a DNA sample for inclusion in a new subject index within the State's DNA Databank.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

DNA Screening

I.D. No. COR-03-06-00011-A

Filing No. 368

Filing date: March 28, 2006

Effective date: April 12, 2006

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

Action taken: Addition of sections 1800.4(a)(3), 1900.4(c)(5) and 1950.3(a)(3) to Title 7 NYCRR.

Statutory authority: Correction Law, sections 2, 112, 855 and 867

Subject: DNA screening of Temporary Release, CASAT and Shock Incarceration Program applicants.

Purpose: To require Temporary Release, CASAT and Shock Incarceration Program applicants to provide DNA samples as a condition of participation in these voluntary programs.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. COR-03-06-00011-EP, Issue of January 18, 2006.

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

The agency received no public comment.

Education Department

**EMERGENCY
RULE MAKING**

Alternative Requirements for Licensure in Mental Health Practitioner Professions

I.D. No. EDU-02-06-00013-E

Filing No. 345

Filing date: March 24, 2006

Effective date: March 27, 2006

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

Action taken: Amendment of sections 79-9.6, 79-10.6, 79-11.6, 79-12.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6507(2)(a) and (3)(a), and 8411(2)(a) and (b)

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 permit practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. The amendment will provide additional time for current practitioners to remedy deficiencies in applications for licensure in these professions.

In addition to establishing requirements for those first entering the mental health practitioner professions, Article 163 of the Education Law authorizes the State Education Department to establish alternative requirements for the licensure of those already practicing prior to the licensure requirement (grandparenting applicants). Under regulations adopted in January 2005, such applicants are required to satisfy all alternative requirements on or before January 1, 2006.

Due to the complexity of creating four new professions, the statutory provision that permits applicants to apply for licensure under the alternative requirements through January 1, 2006, the number of applications received, and the need to carefully review each application for education and experience, the Department was unable to complete the processing of grandparenting applications in time for applicants to complete any identified deficiencies in meeting licensure requirements by January 1, 2006, the date by which the regulations adopted in January 2005 required all requirements to be met. The proposed amendment will afford applicants who are current practitioners an additional year, until December 31, 2006, to meet the alternative requirements. This extension will enable the Department to continue to take the time necessary to review the applications in a manner which protects the public, while affording applicants the opportunity to remedy deficiencies.

The State Education Department received about 7,700 applications for licensure in these four professions by the end of the grandparenting application period (January 1, 2006). As of March 1, 2006, about 3,500 applications have been reviewed and about 1,700 licenses issued. Based upon our experience to date, it is estimated that about one-half of the applications yet to be reviewed by the Department will require further actions by the applicants to cure deficiencies or to provide clarifying information to meet the alternative requirements. Thus, the Department estimates that about 2,000 practitioners will need additional time to cure deficiencies or provide additional information. If they are not afforded an opportunity to meet the

alternative requirements, this will mean that they will not be able to practice their profession until they meet the regular requirements for licensure. In addition to severely impacting the careers of these practitioners, many of whom have been providing mental health services for many years, the discontinuance of their practices would have a serious impact on many patients who rely on them for mental health services.

This amendment was adopted as an emergency measure, effective December 27, 2005, by the Board of Regents at their December 2005 meeting. The amendment is being presented to the Board of Regents for adoption as a permanent rule at their March 20-21, 2006 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act (SAPA). Pursuant to SAPA section 202(5), the permanent adoption cannot become effective until after its publication in the State Register on April 12, 2006. However, the December emergency adoption will expire on March 26, 2006, 90 days after its filing with the Department of State. Emergency action continues to be necessary to preserve the general welfare to help ensure that there are adequate numbers of individuals licensed in the mental health practice professions to meet the mental health care needs of residents of New York State. Therefore, a second emergency action for the preservation of the general welfare is necessary to ensure that the rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Alternative requirements for licensure in the mental health practitioner professions.

Purpose: To permit practitioners in the new mental health practitioner professions to have until Dec. 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by Jan. 1, 2006.

Text of emergency rule: 1. Section 79-9.6 of the Regulations of the Commissioner of Education is amended, effective March 27, 2006, as follows:

79-9.6 Special provisions.

(a) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a mental health counselor as prescribed in section 8402(3) of the Education Law, may qualify for a license as a mental health counselor through meeting the alternative requirements prescribed in either paragraph (1), (2) or (3) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.*

- (1) . . .
- (2) . . .
- (3) . . .

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a mental health counselor, as prescribed in section 8402(3) of the Education Law, except for the examination requirement, may qualify for a license as a mental health counselor through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

2. Section 79-10.6 of the Regulations of the Commissioner of Education is amended, effective March 27, 2006, as follows:

79-10.6 Special provisions.

(a) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a marriage and family therapist as prescribed in section 8403(3) of the Education Law, may qualify for a license as a marriage and family therapist through meeting the alternative requirements prescribed in either paragraph (1), (2) or (3) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.*

- (1) . . .
- (2) . . .
- (3) . . .

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a marriage and family therapist as prescribed in section 8403(3) of the Education Law,

except for the examination requirement, may qualify for a license as a marriage and family therapist through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

3. Section 79-11.6 of the Regulations of the Commissioner of Education is amended, effective March 27, 2006, as follows:

79-11.6 Special provisions.

(a) . . .

(b) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a creative arts therapist as prescribed in section 8404(3) of the Education Law, may qualify for a license as a creative arts therapist through meeting the alternative requirements prescribed in either paragraph (1) or (2) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.* [The applicant shall:]

- (1) . . .
- (2) . . .

(c) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a creative arts therapist, as prescribed in section 8404(3) of the Education Law, except for the examination requirement, may qualify for a license as a creative arts therapist through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

4. Section 79-12.6 of the Regulations of the Commissioner of Education is amended, effective March 27, 2006, as follows:

(a) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a psychoanalyst as prescribed in section 8405(3) of the Education Law, may qualify for a license as a psychoanalyst through meeting the alternative requirements prescribed in either paragraph (1) or (2) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.* [The applicant shall:]

- (1) . . .
- (2) . . .

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a psychoanalyst, as prescribed in section 8405(3) of the Education Law, except for the examination requirement, may qualify for a license as a psychoanalyst through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-02-06-00013-EP, Issue of January 11, 2006. The emergency rule will expire April 12, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

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 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

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

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 practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (2) of section 8411 of the Education Law provides that the State Education Department may establish in regulation alternative criteria for licensure in mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis, for applicants who apply by January 1, 2006.

Paragraph (b) of subdivision (2) of section 8411 of the Education Law establishes alternative requirements that permit an applicant to be licensed in mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis without having to pass an examination, for applicants who apply by January 1, 2006.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish alternative requirements for licensure in mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to permit practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. The amendment will provide additional time for current practitioners to remedy deficiencies in applications for licensure in these professions.

In addition to establishing requirements for those first entering the mental health practitioner professions, Article 163 of the Education Law authorizes the State Education Department to establish alternative requirements for the licensure of those already practicing prior to the licensure requirement (grandparenting applicants). Under regulations adopted in January 2005, such applicants are required to satisfy all alternative requirements on or before January 1, 2006.

Due to the complexity of creating four new professions, the statutory provision that permits applicants to apply for licensure under the alternative requirements through January 1, 2006, the number of applications received, and the need to carefully review each application for education and experience, the Department will be unable to complete the processing of grandparenting applications in time for applicants to complete any identified deficiencies in meeting licensure requirements by January 1, 2006, the date by which the current regulation requires all requirements to be met. The proposed amendment will afford applicants who are current practitioners an additional year, until December 31, 2006, to meet the alternative requirements. This extension will enable the Department to continue to take the time necessary to review the applications in a manner which protects the public, while affording applicants the opportunity to remedy deficiencies.

4. COSTS:

(a) Costs to State government: The proposed change will not impose any additional cost on State government, including the State Education Department. The change in the date by which applicants must meet alternative requirements for licensure will not increase costs for implementing the alternative requirements for licensure.

(b) Cost to local government: The proposed amendment changes requirements for licensure in mental health practitioner professions. The regulation will not impose costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose additional costs on regulated parties. The proposed amendment simply provides applicant additional time to meet alternative requirements for licensure.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment will 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 additional reporting or record keeping requirements on regulated parties.

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS: There are no Federal standards for licensure in mental health practitioner fields.

10. COMPLIANCE SCHEDULE:

The amendment is permissive in nature in that the change gives applicants additional time to meet alternative licensure requirements. Applicants will be required to comply with the regulation on the stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment concerns alternative requirements that an individual must meet to become licensed in the new mental health practitioner professions. The amendment does not regulate small businesses or local governments. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will 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 regulation will apply to individuals who are current practitioners who seek licensure in the four new mental health practitioner professions under alternative requirements for individuals who are practicing these professions prior to the licensure requirement, including that who live or work in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The amendment permits practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet the alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. The amendment establishes no additional reporting, recordkeeping, or other compliance requirements and does not require applicants for licensure to hire professional services in order to comply.

3. COSTS:

The proposed regulation will not impose additional costs on applicants for licensure in the four new mental health practitioner fields, including those who live or work in rural areas of the State. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule extends a deadline for meeting alternative requirements for the licensure of those already practicing the mental health practitioner professions prior to the licensing requirement. The change is permissive in nature in that it will provide such applicants additional time to meet the alternative licensing requirements. Accordingly, there is no need to minimize an adverse impact on applicants who may live or work in rural areas of the State.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Mental Health Practitioners and professional associations representing individuals practicing the four mental health practitioner professions. These groups have members who live or work in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to permit practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. Currently, the regulation requires such applicants to apply for licensure by January 1, 2006 and also meet all of the alternative requirements by that date. The amendment will provide additional year for current practitioners to remedy deficiencies in applications for licensure in these professions. Consequently, the amendment will ease the transition to licensure for individuals who already practicing prior to the licensure requirement. The amendment will have no impact on the number of jobs and employment opportunities in these new licensed professions.

Because it is evident from the nature of this regulation that it will have only a positive impact or no impact on jobs or 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.

EMERGENCY RULE MAKING

State Aid to School Districts

I.D. No. EDU-11-06-00007-E

Filing No. 349

Filing date: March 24, 2006

Effective date: March 28, 2006

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 207 (not subdivided) and 3602(1)(d)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents in February 2006.

Pursuant to section 175.5(a) of the Commissioner's Regulations, in order for a school day to be counted for State aid purposes, students in Grades 7 through 12 must attend school for a minimum of five and one-half hours. Subdivision (b) of section 175.5 allows an exception to this rule where a school day of less than five and one-half hours is conducted because of certain circumstances specified in the subdivision. The proposed amendment to section 175.5(b) would add the scheduling of Regents examinations to the list of permissible circumstances allowing an exception.

As a result, schools would be able to count for State aid purposes a school day that includes a Regents Examination session. In addition, the Department would be able to provide schools with a more flexible Regents Examination schedule that minimizes the number of instances in which general education students and students with disabilities might be expected to take two examinations required for a diploma on the same day.

At their February 2006 meeting, the Board of Regents approved an additional half-day for the administration of the June 2006 Regents examinations.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to ensure that school districts have sufficient advance notice so that they may adjust their schedules to make provision for the additional half-day for the administration of the June 2006 Regents examinations and to include that day for the purpose of apportionment of State aid.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the May 2006 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: State aid to school districts.

Purpose: To amend section 175.5(b) of the commissioner's regulations to provide that the minimum daily sessions lengths set forth in section 175.5(a), for purposes of determining State aid, shall not apply to school days during which Regents examinations have been scheduled.

Text of emergency rule: Subdivision (b) of section 175.5 of the Regulations of the Commissioner of Education is amended, effective March 28, 2006, as follows:

(b) The provisions of subdivision (a) of this section shall not apply to school days during which a session of less than the minimum number of hours is conducted because of extraordinary adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, *the scheduling of Regents examinations*, or such other cause as may be found satisfactory by the commissioner.

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-11-06-00007-P, Issue of March 15, 2006. The emergency rule will expire June 21, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 3602(1)(d) relates to the definition of "average daily attendance" for purposes of the calculation of State aid to school districts.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the length of a school day for State aid purposes. The proposed amendment provides that the minimum daily sessions lengths set forth in Commissioner's Regulations section 175.5(a), for purposes of determining State aid, shall not apply to school days during which Regents examinations have been scheduled.

NEEDS AND BENEFITS:

Pursuant to section 175.5(a) of the Commissioner's Regulations, in order for a school day to be counted for State aid purposes, students in Grades 7 through 12 must attend school for a minimum of five and one-half hours. Subdivision (b) of section 175.5 allows an exception to this rule where a school day of less than five and one-half hours is conducted because of certain circumstances specified in the subdivision. The proposed amendment to section 175.5(b) would add the scheduling of Regents examinations to the list of permissible circumstances allowing an exception.

As a result, schools would be able to count for State aid purposes a school day that includes a half-day Regents Examination session. In addition, the Department would be able to provide school districts and boards of cooperative educational services (BOCES) with a more flexible Regents examination schedule that minimizes the number of instances in which general education students and students with disabilities might be expected to take two examinations required for a diploma on the same day.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility on school districts, BOCES or other local governments. The proposed amendment will provide school districts and BOCES with a more flexible Regents examination schedule that minimizes the number of instances in which general education students and students with disabilities might be expected to take two examinations required for a diploma on the same day.

PAPERWORK:

The proposed amendment does not impose any additional paperwork on school districts or BOCES.

DUPLICATION:

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

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment relates to the length of a school day for purposes of determining State aid to school districts, and will not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local government:
EFFECT OF RULE:

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

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional reporting, recordkeeping or any other compliance requirements on school districts or BOCES. Pursuant to section 175.5(a) of the Commissioner's Regulations, in order for a school day to be counted for State aid purposes, students in Grades 7 through 12 must attend school for a minimum of five and one-half hours. Subdivision (b) of 175.5 allows an exception to this rule where a school day of less than five and one-half hours is conducted because of certain circumstances specified in the subdivision. The proposed amendment to 175.5(b) would add the scheduling of Regents examinations to the list of permissible circumstances allowing an exception.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements school districts or BOCES.

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on school districts or BOCES.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any costs or technological requirements on school districts or BOCES.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents in February 2006. Because the Regents policy upon which the proposed amendment is based applies to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or BOCES from coverage by the rule.

The proposed amendment does not impose any additional compliance requirements or costs on school districts or BOCES. Pursuant to section 175.5(a) of the Commissioner's Regulations, in order for a school day to be counted for State aid purposes, students in Grades 7 through 12 must attend school for a minimum of five and one-half hours. Subdivision (b) of 175.5 allows an exception to this rule where a school day of less than five and one-half hours is conducted because of certain circumstances specified in the subdivision. The proposed amendment to 175.5(b) would add the scheduling of Regents examinations to the list of permissible circumstances allowing an exception.

As a result, schools will be able to count for State aid purposes a school day that includes a half-day Regents Examination session. In addition, the proposed amendment will provide school districts and BOCES with a more flexible Regents examination schedule that minimizes the number of instances in which general education students and students with disabilities might be expected to take two examinations required for a diploma on the same day.

LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on school districts or BOCES in rural areas. Pursuant to section 175.5(a) of the Commissioner's Regulations, in order for a school day to be counted for State aid purposes, students in Grades 7 through 12 must attend school for a minimum of five and one-half hours. Subdivision (b) of 175.5 allows an exception to this rule where a school day of less than five and one-half hours is conducted because of certain circumstances specified in the subdivision. The proposed amendment to 175.5(b) would add the scheduling of Regents examinations to the list of permissible circumstances allowing an exception. The proposed amendment does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs on school districts or BOCES in rural areas.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents in February 2006. The Regents policy upon which the proposed amendment is based applies to all school districts in the State. Therefore, it was not possible to establish different compliance and reporting requirements for school districts or BOCES in rural areas, or to exempt them from the provisions of the proposed amendment.

The proposed amendment does not impose any additional compliance requirements or costs on school districts or BOCES in rural areas. Pursuant to section 175.5(a) of the Commissioner's Regulations, in order for a school day to be counted for State aid purposes, students in Grades 7 through 12 must attend school for a minimum of five and one-half hours. Subdivision (b) of 175.5 allows an exception to this rule where a school day of less than five and one-half hours is conducted because of certain circumstances specified in the subdivision. The proposed amendment to 175.5(b) would add the scheduling of Regents examinations to the list of permissible circumstances allowing an exception.

As a result, schools will be able to count for State aid purposes a school day that includes a half-day Regents Examination session. In addition, the proposed amendment will provide school districts and BOCES with a more flexible Regents examination schedule that minimizes the number of instances in which general education students and students with disabilities might be expected to take two examinations required for a diploma on the same day.

RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment relates to the length of a school day for purposes of determining State aid to school districts, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no adverse impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Standing Committees of the Board of Regents

I.D. No. EDU-11-06-00003-ERP
Filing No. 343
Filing date: March 24, 2006
Effective date: March 28, 2006

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

Emergency action taken: Amendment of section 3.2 of Title 8 NYCRR.
Statutory authority: Education Law, section 207 (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 a change in the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities to determine the educational policies of the State and to carry out the laws and policies of the State relating to education. The existing Committee on Quality will be abolished and a new Committee on Policy Integration and Innovation will be established.

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 that the newly established Committee on Policy Integration and Innovation may assume its responsibilities in a timely and efficient manner.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their May 22-23, 2006 meeting, which is the first scheduled meeting after expiration of the 45-day

public comment period mandated by the State Administrative Procedure Act.

Subject: Standing committees of the Board of Regents.

Purpose: To conform the rules of the Board of Regents to a recent change in the committee structure of the Board of Regents to replace the Committee on Quality with a new Committee on Policy Integration and Innovation and define its functions and responsibilities.

Text of emergency/revised rule: Pursuant to Education Law section 207

1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective March 28, 2006, as follows:

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

- (1) [Quality] *Policy Integration and Innovation*.
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .

2. Paragraph (1) of subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective March 28, 2006:

(1) [Committee on Quality] *Committee on Policy Integration and Innovation*:

(i) [guides the strategic planning effort of the Board of Regents] *provides a forum for debate and recommendation on innovation and cross-cutting issues*;

(ii) [recommends improvements in the structure, operations and staff support of the board] *identifies policy research, evaluation needs and implementation strategies*;

(iii) plans board retreats and training; [and]

(iv) plans the periodic evaluation of the commissioner by the board;

(v) *guides the creation of the 24-month calendar*;

(vi) *monitors implementation of board priorities*; and

(vii) *identifies technology needs and implementation strategies*.

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 March 15, 2006, I.D. No. EDU-11-06-00003-P. The emergency rule will expire June 21, 2006.

Emergency rule compared with proposed rule: Substantial revisions were made in section 3.2(d)(1).

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

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

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

Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 15, 2006, the proposed rule has been substantially revised as follows:

Paragraph (1) of subdivision (d) of section 3.2 of the Rules of the Board of Regents has been revised to add a new subparagraph (vii) to include among the duties of the Committee on Policy Integration and Innovation the phrase "identifies technology needs and implementation strategies."

The above revision requires that the Needs and Benefits section of the previously published Regulatory Impact Statement be revised to read as follows:

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to a change in the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The existing Committee on Quality will be abolished and a new Committee on Policy Integration and Innovation will be established. The Committee on Policy Integration will have the following functions:

- (i) provides a forum for debate and recommendation on innovation and cross-cutting issues;
- (ii) identifies policy research, evaluation needs and implementation strategies;
- (iii) plans board retreats and training;
- (iv) plans the periodic evaluation of the commissioner by the board;
- (v) guides the creation of the 24-month calendar;

(vi) monitors implementation of board priorities; and

(vii) identifies technology needs and implementation strategies.

Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 15, 2006, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement published herewith.

The revised proposed rule relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on 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

Since publication of a Notice of Proposed Rule Making in the State Register on March 15, 2006, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement published herewith.

The revised proposed rule relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas, 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

Since publication of a Notice of Proposed Rule Making in the State Register on March 15, 2006, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement published herewith.

The revised proposed rule relates to the internal organization of the Board of Regents and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised rule that it will have no impact on jobs or 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.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Alternative Requirements for Licensure in Mental Health Practitioner Professions

I.D. No. EDU-02-06-00013-A

Filing No. 346

Filing date: March 24, 2006

Effective date: April 13, 2006

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

Action taken: Amendment of sections 79-9.6, 79-10.6, 79-11.6, 79-12.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6501 (not subdivided); 6504 (not subdivided); 6507(2)(a) and (3)(a); and 8411(2)(a) and (b)

Subject: Alternative requirements for licensure in the mental health practitioner professions.

Purpose: To permit practitioners in the new mental health practitioner professions to have until Dec. 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by Jan. 1, 2006.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. EDU-02-06-00013-EP, Issue of January 11, 2006.

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, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Licensing Examination in Certified Shorthand Reporting**I.D. No.** EDU-02-06-00014-A**Filing No.** 344**Filing date:** March 24, 2006**Effective date:** April 13, 2006

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

Action taken: Amendment of section 71.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6504 (not subdivided); 6506(1); 6507(2)(a) and (3)(a); and 7504(4)

Subject: Licensing examination in certified shorthand reporting.

Purpose: To make a change in an examination requirement for licensure in certified shorthand reporting to partially eliminate the option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination.

Text of final rule: Section 71.3 of the Regulations of the Commissioner of Education is amended, effective April 13, 2006, as follows:

- (a) . . .
- (b) . . .
- (c) . . .

(d) [Materials. Candidates shall be responsible for bringing to the examination materials that they plan to use during the examination, which shall include any of the following materials: notepaper or notebooks, stationery, medical dictionary, shorthand writing machines, pens, pencils, typewriters and transcription equipment. Transcription] *Creation of a transcript. Transcripts created during the examination shall be on paper 8½ inches by 11 inches and all transcripts shall be double-spaced. Candidates may write shorthand with either pen or pencil, or may use shorthand writing machines, and shall transcribe their shorthand notes [in longhand,] on a typewriter or on transcription equipment which is acceptable to the State Board for Certified Shorthand Reporting based upon a determination that such transcription equipment uses technology and/or software in common usage in the practice as a certified shorthand reporter and would not provide the candidate with an unfair advantage over other candidates who would use during the examination transcription equipment that uses technology and/or software in common usage in the practice as a certified shorthand reporter. Transcription of shorthand notes in longhand shall be acceptable only in the event that a candidate's transcription equipment fails or malfunctions during the administration of the examination.*

(e) *Materials. Candidates shall be responsible for bringing to the examination materials that they plan to use during the examination, which shall include any of the following materials: notepaper or notebooks, stationery, medical dictionary, shorthand writing machines, pens, pencils, typewriters and transcription equipment.*

Final rule as compared with last published rule: Nonsubstantive changes were made in the introductory language in the text.

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on January 11, 2006, the following non-substantial revision was made to the proposed rule: the effective date of the regulation has been corrected to read April 13, 2006, instead of April 13, 2005.

The above revision to the proposed rule does not require any changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on January 11, 2006, the proposed amendment was non-substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed amendment, as revised, would change an examination requirement for licensure in certified shorthand reporting. It would partially eliminate the option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination.

The proposed amendment, as revised, concerns an examination requirement that individuals must meet to be licensed as a certified shorthand

reporter. The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments, or have any adverse economic effect on them.

Because it is evident from the nature of the proposed amendment, as revised, that it does not affect small businesses or local governments, no affirmative 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

Since publication of the Notice of Proposed Rule Making in the State Register on January 11, 2006, the proposed rule was non-substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The above revision to the proposed rule does not require any changes to the previously published Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on January 11, 2006, the proposed amendment was non-substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed amendment, as revised, makes a change in an examination requirement for licensure in certified shorthand reporting. It partially eliminates an option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination. This change is expected to affect very few candidates because almost all candidates already use typewriters or other transcription equipment to prepare transcripts during the examination.

This change in the examination requirement will have no effect on the number of jobs or employment opportunities in the field of certified shorthand reporting. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Renewal of a Provisional Certificate**I.D. No.** EDU-04-06-00008-A**Filing No.** 347**Filing date:** March 24, 2006**Effective date:** April 13, 2006

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

Action taken: Amendment of section 80-1.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1) and (7); 3001(2); 3004(1); 3006(1)(b); and 3009(1)

Subject: Requirements for the renewal of provisional certificates in the pupil personnel service and administrative and supervisory service.

Purpose: To restore the opportunity for candidates to renew expired provisional certificates in the pupil personnel service and in the title school administrator and supervisor (authorizing service as a school building level administrator) and establish requirements for the renewal of these certificates.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-04-06-00008-P, Issue of January 25, 2006.

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, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The proposed rule was published in the State Register on January 25, 2006. Below is a summary of written comments received by the State Education Department concerning the proposed rule making and the Department's assessment of issues raised by the comment.

Comment: An organization took the opportunity provided by the public comment period concerning the proposed amendment to section 80-1.7 of Commissioner's Regulations to articulate recommended requirements for

the certification of school psychologists, including recommendations for competencies required for school psychology practice, academic preparation and field experiences, examination, and mentoring.

Response: This comment does not pertain to the subject of the proposed amendment, which concerns requirements for the renewal of expired provisional certificates in the pupil personnel service and for the title school administrator and supervisor (authorizing service as a school building level administrator). The State Education Department plans in the future to undertake a re-examination of certification requirements for school psychologists along with the other pupil personnel service titles. The Department will retain the comments and recommendations submitted and consider them during that review.

NOTICE OF ADOPTION

Certification of Teaching Assistants

I.D. No. EDU-04-06-00009-A

Filing No. 348

Filing date: March 24, 2006

Effective date: April 13, 2006

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

Action taken: Amendment of section 80-5.6(b)(2)(ii) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1), (2), and (7); 3001(2); 3004(1); 3006(1)(b); and 3009(1) and (2)

Subject: Requirements for the certification of teaching assistants.

Purpose: To establish requirements for the certification of teaching assistants for service in the State's public schools: extending the time validity of the level I and II teaching assistant certificates, specifying additional requirements for the renewal of the level I teaching assistant certificate, requiring additional collegiate study for the level II teaching assistant certificate, and clarifying coursework requirements.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-04-06-00009-P, Issue of January 25, 2006.

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, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

the provisions of Sections 307 and 308 of the Insurance Law and are required to file what are known as Annual and Quarterly Statement Blanks on forms prescribed by the Superintendent. The Superintendent has prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time by the National Association of Insurance Commissioners ("NAIC"), as supplemented by additional New York forms and instructions. To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy procedure and instruction manuals. The latest edition of one of the manuals, Accounting Practices and Procedures Manual As Of March 2005 ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). The Accounting Manual, which is incorporated by reference into this regulation, was adopted by the NAIC in March 2005.

The Accounting Manual represents a codification of statutory accounting principles. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. This amendment will take effect upon filing with the Secretary of State so that the accounting principles of this part will be in place for use in the preparation of Quarterly Statements and the Annual Statement for 2005. This amendment adopts the latest version of the Accounting Manual and also updates the list of SSAPs or sections thereof that are either not adopted, or are modified with additional guidance provided.

This regulation, as amended, will enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject to the regulation, by clearly setting forth the accounting practices and procedures to be followed in completing quarterly and annual statements required by law. In the preparation of this amendment, it was necessary for the Insurance Department to take into account determinations made by the NAIC at its meeting in 2005.

Absent the amendment being effective immediately, many of New York's accounting practices and procedures would not be consistent with the practices and procedures followed in most other states.

For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the general welfare.

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update references in the regulatory text to documents incorporated by reference that have been revised and republished and to make minor modifications regarding accounting treatment of certain insurer assets.

Text of emergency rule: Subdivision (c) of Section 83.2 of Part 83 is amended to read as follows: (c) To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2004*]2005* ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs").

The footnote to subdivision (c) of Section 83.2 is amended to read as follows:

*ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2004] 2005. Copyright 1999, 2000, 2001, 2002, 2003, 2004, 2005 by National Association of Insurance Commissioners, in Kansas City, Missouri.

Subdivision (m) of Section 83.4 is amended to read as follows:

(m) (1) For life insurers, Paragraph 8 of SSAP No. 40 Real Estate Investments is not adopted. Depreciation on real estate investments owned by life insurers shall be computed at a rate no greater than two and one-half percent per annum, in accordance with Section 1405(b)(1)(C) of the Insurance Law.

(2)(i) For Article 43 corporations and not-for-profit Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans authorized pursuant to Article 44 of the Public Health Law, SSAP No. 40 Real Estate Investments is adopted with the following addition:

In accordance with Section 4310(l) of the Insurance Law, in determining the financial condition of Article 43 corporations and not-for-profit Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Service Plans and Comprehensive HIV Special Needs Plans authorized pursuant to Article 44 of the Public Health Law, real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, may be valued by the corporation at either its current amortized book value or at ninety percent of its current market value, less

Insurance Department

EMERGENCY RULE MAKING

Financial Statement and Accounting Practices and Procedures

I.D. No. INS-15-06-00003-E

Filing No. 351

Filing date: March 24, 2006

Effective date: March 24, 2006

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

Action taken: Amendment of sections 83.2 and 83.4 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c and 4408-a; and L. 2002, ch. 599

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

Specific reasons underlying the finding of necessity: Certain provisions of the Insurance Law require that insurers file financial statements annually and quarterly with the Superintendent. These insurers are subject to

encumbrances. Market value shall be determined by an independent appraisal undertaken annually, no earlier than September 30 of each year, by a member of the Appraisal Institute, 55 West Van Buren Street, Suite 1000, Chicago IL 60607. (website address is <http://appraisalinstitute.org>.) This option is not applicable to for-profit corporations authorized pursuant to Article 44 of the Public Health Law.

(ii) Real estate “owned and held” and “utilized in the ordinary course of business” as set forth in subparagraph (m)(2)(i) of this subdivision shall have the same definition as “property occupied by the company” as set forth in Paragraph 5 of SSAP No. 40 Real Estate Investments.

(iii) The provisions of paragraph 11 of SSAP No. 40 shall govern the independent appraisal requirement set forth in subparagraph (m)(2)(i) of this subdivision.

(iv) The election to value real estate at either its current amortized book value or at ninety percent of its current market value, less encumbrances, shall be applied to the valuation of all property not held for sale. As of any determination date either all real estate shall be valued at current amortized book value or all real estate shall be valued at ninety percent of its current market value, less encumbrances. Changes in the statement value of real estate held under this election shall be accounted for as unrealized capital gains or losses.

(v) If an entity elects to value its real estate at ninety percent of its current market value, less encumbrances, in addition to the Schedule A filed as part of the NAIC Annual Statement Health Blank, a Supplemental Schedule A must be completed for what the current amortized book value would be if the entity had not made such an election as of the determination date. A Supplemental Schedule A is herein defined as a Schedule A submitted for informational purposes only, not intended to supersede the Schedule A filed as part of the NAIC Annual Statement Health Blank. The completed Supplemental Schedule A shall be submitted annually on or before the first day of March for Article 43 corporations and on or before the first day of April for not-for-profit Health Maintenance Organizations as a supplement to the NAIC Annual Statement Health Blank in support of the note requirement of subparagraph 83.4(m)(2)(vii) of this subdivision.

(vi) Notwithstanding the valuation methodology permitted in subparagraph (m)(2)(i) of this subdivision and the instructions of subparagraph (m)(2)(iv) of this subdivision, properties that the reporting entity has the intent to sell, or is required to sell, shall be classified as properties held for sale and carried at the lower of depreciated cost or current market value less encumbrances and estimated sales costs consistent with the requirements of paragraph 10 of SSAP No. 40.

(vii) An entity which elects to change its valuation of real estate pursuant to sub-paragraph (m)(2)(i) of this subdivision shall disclose all of the following in the notes to its annual and quarterly financial statements:

- a. The current amortized book value of each property.
- b. The current market value and ninety percent of the current market value, less encumbrances, of each property.
- c. The determination date of the annual appraisal.
- d. The name and qualifications of the independent appraiser.

(viii) Appraisals obtained in satisfaction of subparagraph (m)(2)(i) of this subdivision shall be maintained in good order and shall be readily available for examination.

Subdivision (n) of Section 83.4 is amended to read as follows:

(n)(1) Paragraph [5]6 of SSAP No. [46]88 Investments in Subsidiary, Controlled, and Affiliated Entities, A Replacement of SSAP No. 46, is not adopted. Pursuant to Section 1501(c) of the Insurance Law, the superintendent may determine upon application that any person does not, or will not upon taking of some proposed action, control another person. 10 NYCRR 98-1.9(d) authorizes the Commissioner of Health to make a similar determination with respect to organizations with a certificate of authority pursuant to Public Health Law Article 44.

(2) Paragraph [7]8 of SSAP No. [46]88 is not adopted with respect to subsidiaries that are insurers. Pursuant to Section 1414(c)(2) of the Insurance Law, the shares of an insurer that is a subsidiary shall be valued at the lesser of its market value or book value as shown by its last annual statement or the last report on examination, whichever is more recent.

(3) Paragraph [7 b)(i)]8(b)(i) of SSAP No. [46]88 is not adopted with respect to Public Health Law Article 44 Health Maintenance Organizations which are subsidiaries and which record goodwill as an admitted asset pursuant to Section 83.4(t) of this Part. Investments in such entities shall be recorded based on the underlying statutory equity of the respective entity’s financial statements, including an admitted asset for goodwill as provided for in Section 83.4(t) of this Part.

Subdivision (t) of Section 83.4 is amended to read as follows:

(t) Paragraph 7 of SSAP No. 68 Business Combinations and Goodwill is not adopted. Section 1302(a)(1) of the Insurance Law shall apply. Goodwill recorded as an admitted asset on the books of a Public Health Law Article 44 Health Maintenance Organization, Integrated Delivery System, Prepaid Health Services Plan or Comprehensive HIV Special Needs Plan as of December 31, 2000[, which is in compliance with Generally Accepted Accounting Principles,] shall continue to be treated as an admitted asset on Financial Statements filed with the superintendent or the Commissioner of Health. *Goodwill shall be written off over its useful life. The period of amortization shall not exceed 40 years.*

Subdivision (v) of Section 83.4 is amended to read as follows:

(v) Paragraph 9 of SSAP No. 73 Health Care Delivery Assets – Supplies, Pharmaceutical and Surgical Supplies, Durable Medical Equipment, Furniture, Medical Equipment and Fixtures, and Leasehold Improvements in Health Care Facilities is not adopted. Durable medical equipment, furniture, medical equipment and fixtures, and leasehold improvements shall be depreciated utilizing a depreciation schedule no less conservative than that set forth in the latest revision of Estimated Useful Lives of Depreciable Hospital Assets (Revised [1998]2004 Edition)**. The document may also be viewed at the New York State Insurance Department’s New York City office at 25 Beaver Street, New York, NY 10004. Lease improvements in health care facilities shall be amortized against net income over the shorter of their estimated useful life or the remaining life of the original lease excluding renewal or option periods, using methods detailed in SSAP No. 19.

The footnote to subdivision (v) of Section 83.4 is amended to read as follows:

**ESTIMATED USEFUL LIVES OF DEPRECIABLE HOSPITAL ASSETS/Revised [1998]2004 Edition, Copyright[1998]2004 by Health Forum, Inc. All rights reserved. Printed with the permission of Health Forum, Inc., in Chicago.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 21, 2006.

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

Regulatory Impact Statement

1. Statutory authority: Insurance Law Section 107(a)(2) defines the term “accredited reinsurer” which is used in sections 83.2, 83.3, and 83.5 of Part 83.

Insurance Law Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the Insurance Law; effectuate any power granted to the superintendent under the Insurance Law; prescribe forms; or otherwise make regulations.

Insurance Law Sections 307 and 308 require insurers to file annual and quarterly statement blanks on forms prescribed by the superintendent and in accordance with instructions prescribed by the superintendent. Section 307(a)(1) of the Insurance Law requires every insurer authorized in New York to file an annual statement showing its financial condition in such form as prescribed by the superintendent. Section 307(a)(2) permits the use of the annual statement form adopted from time to time by the NAIC. Provisions of Article 44 of the Public Health Law and Sections 98-1.16(a) and 98-1.16(b) of Title 10 of the New York Code of Rules and Regulations provide that Public Health Law Article 44 Health Maintenance Organizations and Integrated Delivery Systems shall file financial statements annually and quarterly with both the commissioner of health and the superintendent.

Insurance Law Section 1109(a) provides that an organization complying with the provisions of Article 44 of the Public Health Law is subject to various specified sections of the Insurance Law, including Section 308. Section 1109(e) provides that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Article 13 specifies the requirements regarding the treatment of assets and deposits in determining the financial condition of insurers for the purposes of the Insurance Law.

Insurance Law Article 14 contains provisions regarding the authorization of, and restrictions on, investments of insurers regulated by the Insurance Department and sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Article 15 contains provisions sets forth procedures for the establishment and operation of holding company systems including controlled insurers.

Insurance Law Section 3233 sets forth provisions concerning stabilization of health insurance markets and premium rates.

Insurance Law Section 4117 sets forth provisions concerning loss reserves and loss expense reserves of property/casualty insurance companies.

Insurance Law Section 4233 sets forth provisions concerning the annual statements of life insurance companies including a provision that in addition to any other matter which may be required to be stated therein, either by law or by the superintendent pursuant to law, every annual statement of every life insurer doing business in New York shall conform substantially to the form of statement adopted from time to time for such purpose by, or by the authority of, the National Association of Insurance Commissioners, together with such additions, omissions or modifications, similarly adopted from time to time, as may be approved by the superintendent.

Insurance Law Section 4239 sets forth provisions concerning allocation and reporting of income and expenses of life insurers.

Insurance Law Article 43 establishes organizational requirements, investment and reserve requirements for non-profit medical and dental indemnity, or health and hospital service corporations organized in this state. The article also establishes "stop loss funds", from which health maintenance organizations, corporations or insurers may receive reimbursement, to the extent of funds available therefor, for claims paid by such entities for members covered under certain contracts.

Insurance Law Section 6404 sets forth provisions concerning the assets, title plant, and valuation and allowance of admitted assets of title insurance corporations.

Pursuant to the above provisions, the superintendent is authorized to implement the National Association of Insurance Commissioners Accounting Practices and Procedures Manual As Of March 2005 ("Accounting Manual"), subject to any provisions in New York statute which conflict with particular points in those rules. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). The Accounting Manual represents a codification of Statutory Accounting Principles.

Additionally, in regard to Public Health Law Article 44 Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans, Insurance Law Sections 1109(e) and 4301(e)(5) respectively provide that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law and authorize the superintendent to modify any regulatory requirement in order to encourage the development of Health Maintenance Organizations in this state. Article 43 of the Public Health Law provides for the issuance of certificates of authority to health maintenance organizations, the granting by the Commissioner of Health of a special purpose certificate of authority, provided the applicant complies with certain requirements, authorizes the superintendent to establish standards governing the fiscal solvency of Integrated Delivery Systems, and requires the filing of financial reports by Prepaid Health Service Plans and Comprehensive HIV Special Needs Plans. In accordance with these sections, the regulation sets forth certain accounting rules applicable to Public Health Law Article 44 Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans. This Part does not apply to managed long term programs licensed pursuant to Section 4403-f of the Public Health Law.

2. Legislative objectives: Certain provisions of the Insurance Law provide that authorized insurers, accredited reinsurers, authorized fraternal benefit societies, and Public Health Law Article 44 Health Maintenance Organizations and Integrated Delivery Systems shall file financial statements annually and quarterly with the superintendent. These entities are subject to the provisions of Sections 307 and 308 of the Insurance Law and are required to file what are known as Annual and Quarterly Statement Blanks on forms prescribed by the superintendent. Except in regard to filings made by Underwriters at Lloyd's, London, the superintendent has prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time by the National Association of Insurance Commissioners, as supplemented by additional New York forms and instructions. To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the Accounting Practices and Procedures Manual As Of March 2005 ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into this regulation. The preamble to the Accounting Manual states that

"...this Manual is not intended to preempt states' legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations..."(Accounting Manual at Pg. P-1).

3. Needs and benefits: The purpose of this Part is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject hereto, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law.

The National Association of Insurance Commissioners has most recently adopted a new Accounting Manual as of March 2005. The Accounting Manual represents a codification of statutory accounting principles, presented in the form of Statement of Statutory Accounting Principles ("SSAP's"). The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. Statutory Accounting Principles ("SAP") prior to codification did not always provide a consistent and complete basis of accounting and reporting. The prescribed statutory accounting model resulted in practices that varied from state to state. The codification project results in more comparable financial statements and in more complete disclosures, which will make regulators' analysis techniques more meaningful and effective. Codification will provide examiners and analysts with uniform accounting rules against which insurers' financial statements can be evaluated. Also, calculations under Risk Based Capital will be reported more consistently under codification.

The NAIC's instructions to insurers and Public Health Law Article 44 HMOs for completing their 2005 annual statement forms include the following: "The annual statement is to be completed in accordance with the NAIC Annual Statement Instructions and Accounting Practices and Procedures Manual – version as of March 2005 except to the extent that state law, rules or regulations are in conflict with these publication." In some instances, a New York statute or regulation may preclude implementation of particular codification rules. In a few instances, for various reasons, the Department has not implemented the codification rule.

Chapter 462 of the Laws of 2004 added a subsection (l) to Insurance Law Section 4310. The new subsection requires that in determining the financial condition of corporations subject to the provisions of Article 43 and not-for-profit corporations authorized pursuant to Article 44 of the Public Health Law, the Insurance Department shall include real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, provided that such real estate may be valued by the corporation at either its current amortized book value or at ninety percent of its current market value, as determined by an independent appraisal undertaken annually and in accordance with regulations promulgated by the Superintendent of Insurance. This required modification of SSAP No. 40 regarding permissible valuation methods.

The deviation from SSAP No. 88 is a continuation of the deviation to old SSAP No. 46, which it replaced in the 2005 Manual. The paragraphs of SSAP No. 88 that were not adopted were contrary to provisions of the Insurance Law regarding certain holding companies and subsidiaries.

The deviation from SSAP No.68 is continued since Section 1302(a)(1) of the Insurance Law dictates that goodwill shall not be treated as an admitted asset by insurers. In the case of certain HMOs however, goodwill can be treated as an admitted asset to be depreciated over a period not to exceed 40 years. The amendment was necessary to preserve the permissibility of this practice. The existing regulatory language was based upon Generally Accepted Accounting Principles ("GAAP") practices in place at the time the regulation was originally promulgated. GAAP accounting principles have since been modified with regard to the treatment of goodwill. This amendment eliminates the reference to existing GAAP principles and allows certain HMO's to continue accounting for goodwill as an admitted asset subject to the aforementioned 40 year depreciation limitation.

The amendment of the provision regarding SSAP No. 73 was necessitated by the issuance of a revised edition of ESTIMATED USEFUL LIVES OF DEPRECIABLE HOSPITAL ASSETS, which is incorporated by reference in regulation.

4. Costs: Cost to regulated entities as a result of implementing Part 83 are the acquisition of the Accounting Manual from the National Association of Insurance Commissioners and the acquisition of *Estimated Useful Lives of Depreciable Hospital Assets (Revised 2004 Edition)* from the American Hospital Association. The Accounting Manual costs \$425.00 per copy plus shipping charges. It is estimated that an insurer with 2,000 employees would require between 15 and 20 copies for a total cost of

between \$6,375 and \$8,500 exclusive of shipping charges. *Estimated Useful Lives of Depreciable Hospital Assets* is only needed by Insurance Law Article 43 Corporations and Public Health Law Article 44 Health Maintenance Organizations with medical facilities. Currently, there are only three plans that have medical facilities. For these Plans, it is estimated that between 7 and 15 copies would be needed. *Estimated Useful Lives of Depreciable Hospital Assets* (Revised 2004 Edition) costs \$45.00 per copy with a 15% discount if between 11 to 50 copies are ordered. Total costs would be between \$315.00 for 7 copies and \$573.75 for 15 copies, exclusive of shipping charges.

There is no cost to the Insurance Department for the Accounting Manual since it is obtainable free of charge from the National Association of Insurance Commissioners. The Department will need to acquire 35 copies of *Estimated Useful Lives of Depreciable Hospital Assets* (Revised 2004 Edition) at a total cost of \$1,338.75, exclusive of shipping charges.

5. Paperwork: To the very minor extent to which the regulation makes changes in accounting principles, staffs of insurers will need to familiarize themselves with this regulation. To the extent that the regulation conforms New York filings, for the most part, to other states' requirements, the need for separate New York filings is reduced.

6. Local government mandate: This regulation does not impose any obligations on local governments.

7. Duplication: This regulation will not duplicate any existing state or federal rule.

8. Viable alternatives: None. The regulation ensures conformance with New York statutes and regulations that preclude implementation of particular rules found in the Accounting Manual.

9. Federal standards: There are no minimum standards of the Federal government in the same or similar areas.

10. Compliance schedule: The regulated parties should already be in compliance with the provisions of the Accounting Manual instructions unless and until the Insurance Department promulgates a regulation delineating exceptions.

Regulatory Flexibility Analysis

The Insurance Department finds that this regulation will have no adverse economic impact on local governments, and will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis of this finding is that this regulation is directed to insurers as defined under this regulation, none of which are local governments.

The Insurance Department finds that this regulation will have no adverse impact on small businesses, and will not impose reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this regulation is directed to insurers. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and determined that none of them would come within the definition of small businesses, within the meaning of the State Administrative Procedure Act, because none are both independently owned and have fewer than one hundred employees.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: This regulation applies to insurers which do business or are resident in every county in the state, including those that are, or contain, rural areas, as defined under section 102(13) of the State Administrative Procedure Act. Some of the home offices of these insurers lie within rural areas.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment does not impose new reporting or recordkeeping requirements. To the extent that the regulation conforms New York filings, for the most part, to other States' requirements, the need for separate New York filings is reduced. To the very minor extent to which the regulation makes changes in accounting principles, staffs of insurers will need to familiarize themselves with the provisions of this regulation.

3. Costs: Insurers as defined under this regulation are the regulated persons. Since the regulation is for the most part merely declaratory of existing accounting practices and procedures, there is no negative cost impact on regulated persons, and possibly a beneficial one, because the regulation is intended to enhance consistency of accounting treatment of assets, liabilities, reserves, income and expenses. Accounting is facilitated because the practices and procedures are organized and consolidated pursuant to one regulation.

4. Minimizing adverse impact: This regulation applies to any insurers that do business in New York State. The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: The amendment would not have a negative impact on rural areas. Insurers that have home offices that lie within rural

areas were represented in industry organizations that were consulted in every stage of the development of this regulation.

Job Impact Statement

The proposed rule changes should have no adverse impact on jobs and employment opportunities in New York State. The regulation codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. The current amendment, in addition to changing the publication date references to publications incorporated by reference in the regulation, makes some minor changes to current accounting practices but should have no adverse impact on jobs or employment opportunities.

EMERGENCY RULE MAKING

Claims for Personal Injury Protection Benefits

I.D. No. INS-15-06-00011-E

Filing No. 366

Filing date: March 27, 2006

Effective date: March 27, 2006

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

Action taken: Amendment of sections 65-3.12 and 65-3.13 (Regulation 68-C) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the eligible insurer's liability to pay first party benefits. Section 11 codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the terms "special expedited arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the mechanism for informing applicants of the availability of the special expedited arbitration option.

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

Subject: Claims for personal injury protection benefits.

Purpose: To require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits.

Text of emergency rule: Subdivisions (b) and (c) of Section 65-3.12 is amended to read as follows:

(b) If a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Once an insurer concludes that it was not the first insurer contacted to provide first party benefits it shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If, after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer refuses to process your claim, you have the option to submit this dispute for expedited arbitration by providing a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. This arbitration is limited solely to determining the insurer to process your claim only, and it will not resolve issues regarding pending bills or consider any other defense to payment.

(c) If the source of first-party benefits is at issue because the status of the injured person as a pedestrian or an occupant of a motor vehicle is in dispute, the insurer to whom notice of claim was given or if such notice was given to more than one insurer, the first insurer to whom notice was given shall, within 15 calendar days after receipt of notice, obtain an agreement with the other insurer or insurers as to which insurer will furnish no-fault benefits. If such an agreement is not reached within the aforementioned 15 days, then the insurer to whom such notice was first given shall process the claim and pay first-party benefits and resolve the dispute in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part, and the insurer to whom notice was not given first shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If, after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer refuses to process your claim, you have the option to submit this dispute for expedited arbitration by providing a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. This arbitration is limited solely to determining the insurer to process your claim only, and it will not resolve issues regarding pending bills or consider any other defense to payment.

Paragraphs (2), (3) and (4) of Section 65-3.13(a) are amended to read as follows:

(2) An applicant who is a named insured or a relative of a named insured covered by additional personal injury protection benefits, and who, while an operator or occupant of a motor vehicle, sustains a personal injury arising out of the use or operation of such motor vehicle outside of New York State, shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision [b] of this section.) *If the insurers do not reach an agreement, then any insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If, after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer refuses to process your claim, you have the option to submit this dispute for expedited arbitration by providing a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. This arbitration is limited solely to determining the insurer to process your claim only, and it will not resolve issues regarding pending bills or consider any other defense to payment.

(3) An applicant who is a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury through the use or operation of a motor vehicle or a motorcycle shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision [b] of this section.) *If the insurers do not reach an agreement, then any insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If, after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer refuses to process your claim, you have the option to submit this dispute for expedited arbitration by providing a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. This arbitration is limited solely to determining the insurer to process your claim only, and it will not resolve issues regarding pending bills or consider any other defense to payment.

(4) An applicant who is not a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is an occupant of an insured motor vehicle covered for additional personal injury protection benefits or a motor vehicle operated by a person covered for additional personal injury protection benefits, and who sustains a personal injury through the use or operation of the insured motor vehicle outside of New York State, shall institute the claim against the insurer of the owner or operator of the insured motor vehicle. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim unless the insurers agree among

themselves that another such insurer will accept and pay the claim initially. (See subdivision [b] of this section.) *If the insurers do not reach an agreement, then any insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If, after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer refuses to process your claim, you have the option to submit this dispute for expedited arbitration by providing a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. This arbitration is limited solely to determining the insurer to process your claim only, and it will not resolve issues regarding pending bills or consider any other defense to payment.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 24, 2006.

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

Consolidated Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 2601, 5221 and 5106 of the Insurance Law and Section 2407 of the Vehicle and Traffic Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation (MVAIC) in the payment of no-fault benefits to qualified persons. Section 5106 of the Insurance Law authorizes the superintendent to promulgate procedures to resolve disputes among eligible insurers using an expedited arbitration process that will designate the insurer responsible for the payment of first party benefits.

2. Legislative objectives: Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicles Insurance Reparations Act, popularly referred to as the No-Fault Law. No-fault insurance was introduced to rectify many problems that were inherent in the existing tort system utilized to settle claims, and to provide for prompt payment of health care and loss of earnings benefits. Chapter 452 of the Laws of 2005 which amends Section 5106 of the Insurance Law codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of the claim for first party benefits. It also enhances the current arbitration procedures to include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits.

3. Needs and benefits: When there was a dispute regarding which insurer, among two or more responsible insurers regarding who would be responsible for the payment of the claim for first party benefits to the applicant, generally the insurer that received notice of the claim first was required by regulation to furnish the benefits. When an insurer failed to comply with this regulatory requirement, the applicant's recourse was to seek resolution of the dispute in arbitration or a court of competent jurisdiction. Because of the inherent delays in the resolution of cases in arbitration and court, a faster recourse was needed to assure accident victims that the failure of one or more insurers to meet their regulatory responsibility would not result in the failure of accident victims to be swiftly compensated for their economic losses. Chapter 452 of the Laws of 2005 provides for an expedited eligibility hearing option. These rules implement the law and require an insurer to issue a denial with specific language advising the applicant of the availability of special expedited arbitration to resolve the issue of which insurer is to be designated to process the claim for first party benefits. The rules also provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits. By providing notification of, and procedures for, administration of the special expedited arbitration, an applicant can utilize the special expedited arbitration to expeditiously resolve all disputes regarding which insurer should be liable for the payment of the claim for first party benefits.

4. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will

be minimal, because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13, which provide for the resolution of most "priority of payment" disputes. Any additional costs associated with these rules would be the result of claims for which insurers or self-insurers do not agree to pay first-party benefits, thus causing the applicant to go to arbitration to resolve this dispute. The additional costs would include: the costs of defending cases, reimbursing filing fees whenever the applicants prevail and paying applicants' attorney fees. These additional cases will increase the insurers' and self-insurers' share of costs from the American Arbitration Association. Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

5. Local government mandates: Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of these rules.

6. Paperwork: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self-insurers associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with reimbursing filing fees and paying applicants their attorney fees whenever the applicants prevail in whole or part. The insurers and self-insurers will also incur additional paperwork to comply with record retention requirements. However, it is anticipated that there will be few requests for the special expedited arbitration and therefore paperwork should be minimal.

7. Duplication: None.

8. Alternatives: This procedure is required by the recent statutory amendment.

9. Federal standards: None.

10. Compliance schedule: These rules have an immediate effective date because of the effective date of Chapter 452 of the Laws of 2005. The AAA, insurers, and self-insurers will be able to implement these rules immediately upon the regulation taking effect.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: The Insurance Department finds that these rules will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments except as noted below. The basis for this finding is that these rules are primarily directed to property/casualty insurance companies authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business". The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and determined that none of them would fall within the definition of "small business", because there are none which are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self insure losses and the Department has no information to indicate that any self-insurers are small businesses.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers may be considered small business.

Some local governments are self-insured for no fault benefits.

2. Compliance requirements: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. There will be additional paperwork requirements imposed on local governments that are self insured for no-fault benefits associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with reimbursing filing fees and paying applicants their attorney fees whenever the applicants prevail in whole or part. The local governments will also incur additional paperwork to comply with record retention requirements. However, the arbitration alternative is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration and therefore paperwork should be minimal

and the procedures established by this regulation should minimize adverse impact on the parties.

3. Professional services: The health care provider and local government are not required to use professional services to comply with the rules. However, it is at their option if they wish to use attorneys for the special expedited arbitration.

4. Compliance costs: Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money. Additional arbitration requests may be filed against local governments who are self insured for no-fault benefits because applicants can seek the resolution of priority of payments disputes in special expedited arbitration. Such disputes will require the self-insurers to incur the costs of defending cases, reimbursing filing fees whenever the applicants prevail in whole or part and paying applicants their attorney fees. The additional cases will increase the self insured local government's costs from the American Arbitration Association. The arbitration alternative is mandated by Chapter 452 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because self-insurers are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13. As such, it is also anticipated that the additional aforementioned costs to self-insurers should be minimal.

5. Economic and technological feasibility: Compliance with the rules should be economically and technologically feasible for health care providers since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Compliance with the rules by self insured local governments should be economically and technologically feasible since the rules are using the procedures already in place for disputes involving late notices to now also apply to disputes involving which insurer is to be designated to process the claim for first party benefits. In addition, the notice requirements are using a form already in use by the companies.

6. Minimizing adverse impact: This rule applies uniformly to regulated parties and is mandated by statute. This rule does not impose any additional burden on small businesses and local governments, and the Insurance Department does not believe that it will have an adverse impact on these entities.

7. Small business and local government participation: This action was not contemplated at the time of the preparation of the Insurance Department's last Regulatory Agenda because the law was enacted after the Regulatory Agenda was published. Because of the effective date of the law, immediate regulatory action has to be taken. This notice is intended to provide small businesses, local governments, and public and private entities with the opportunity to participate in the rule-making process.

Consolidated Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and self-insurers covered by this regulation do business in every county in this state, including rural areas as defined under Section 102 (10) of the State Administrative Procedure Act. Some of the home offices of these insurers and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers are in rural areas.

2. Reporting, recordkeeping and other compliance requirements: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self-insurers (including local governments self-insured for no-fault benefits) associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with reimbursing filing fees and paying applicants their attorney fees whenever the applicants prevail in whole or part. The insurers and self-insurers will also incur additional paperwork to comply with record retention requirements. To the extent that additional applicants will also have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. However, the arbi-

tration alternative is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties.

3. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because insurers and self-insurers (including local governments self insured for no-fault benefits) already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13, which provide for the resolution of most "priority of payment" disputes. Any additional costs associated with these rule would be the result of claims for which insurers or self-insurers do not agree to pay first-party benefits, thus causing the applicant to go to arbitration to resolve this dispute. The additional costs would include: the costs of defending cases, reimbursing filing fees whenever the applicants prevail and paying applicants' attorney fees. These additional costs will increase the insurers' and self insurers' share of costs from the American Arbitration Association. Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State and is mandated by statute. This rule does not impose any greater burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: This action was not contemplated at the time of the preparation of the Insurance Department's last Regulatory Agenda because the law was enacted after the Regulatory Agenda was published. Because of the effective date of the law, immediate regulatory action has to be taken. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with the opportunity to participate in the rule-making process.

Consolidated Job Impact Statement

These rules should not have any adverse impact on jobs and employment opportunities in this State since the changes made only require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits and provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first part benefits.

EMERGENCY RULE MAKING

Arbitration

I.D. No. INS-15-06-00012-E

Filing No. 367

Filing date: March 27, 2006

Effective date: March 27, 2006

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

Action taken: Amendment of section 65-4.5(b) (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the insurer's liability to pay first party benefits. Section 11 codifies the resolution process when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the term "special expedited

arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the procedures for administration of the special expedited arbitration for disputes regarding the designation of an insurer for the processing of first part benefits. By making the insurers and applicants aware of these procedures, applicants will be able to utilize special expedited arbitration when there is a dispute between multiple eligible insurers over which carrier has primary responsibility for the payment of first party benefits.

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

Subject: Arbitration.

Purpose: To provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first part benefits.

Text of emergency rule: Subdivision (b) of Section 65-4.5 is amended to read as follows:

(b) Special expedited arbitration.

(1) Special expedited arbitration shall be available for disputes involving [the]:

(i) *The failure to submit notice of claim within 30 calendar days after the accident and where it has been determined by the insurer that reasonable justification for late notice has not been established; and*

(ii) *The proper application of subdivisions (b) and (c) of Section 65-3.12 of this Part and of paragraphs (2), (3) and (4) of Section 65-3.13(a) of this Part.*

(2) (i) An applicant may request special expedited arbitration for resolution of the dispute involving late notice within 30 calendar days after mailing of the denial of claim by the insurer stating that reasonable justification for late notice has not been established.

(ii)(a) *In regard to disputes related to subdivisions (b) and (c) of Section 65-3.12 or paragraphs (2), (3) and (4) of section 65-3.13(a) of this Part, an applicant may request special expedited arbitration to designate an insurer that is responsible for processing first-party benefits and additional first party benefits, after each insurer has issued a Denial of Claim form (NF-10) stating that the insurer is not the insurer eligible to process the first-party benefits claimed.*

(ii)(b) *Special expedited arbitration required by clause (a) of this subparagraph shall only designate an insurer to commence processing the claim based upon the first insurer notified that is otherwise liable for the payment of first party benefits. The insurer designated by the arbitration shall retain all rights of investigation afforded under statute and regulation, and the ultimate liability for payment of benefits shall be resolved in accordance with section 65-4.11 of this Subpart.*

(3) At the time of [such] a request for special expedited arbitration, the applicant shall make a complete written submission supporting his or her position. [No] Any further written submissions shall be accepted [unless requested by] into evidence at the discretion of the arbitrator.

[(3)] (4) Applications for special expedited arbitration shall be submitted to the conciliation center of the designated organization and shall comply with the requirements for initiation of arbitration contained in [paragraph 65-4.2(b)(1)] subparagraph 65.4.2(b)(1)(iii) of this Subpart.

[(4)] (5) The applicant's submission shall be forwarded by the conciliation center to the insurer within 3 business days of receipt. The insurer may provide the center with reasonable special mailing or transmittal instructions to facilitate the processing of these arbitration requests.

[(5)] (6) The insurer shall respond in writing to the applicant's submission within 10 business days after the mailing by the center. No further submissions shall be accepted unless requested by the arbitrator.

[(6)] (7) The dispute shall be resolved solely upon the basis of written submissions unless the arbitrator concludes that the issues in dispute require an oral hearing.

[(7)] (8) The arbitrator shall issue a written decision within 10 business days after receipt of all written submissions from the parties or at the conclusion of an oral hearing.

[(8)] (9) For the purpose of special expedited arbitration, the superintendent may appoint arbitrators, qualified in accordance with the provisions of this section, to serve on a per diem basis. Such arbitrators shall contract with the designated organization. The rate of per diem compensation shall be determined by the designated organization, after consultation with the no-fault arbitrator screening committee subject to the approval of the superintendent. Such arbitrators shall be independent con-

tractors, and shall not be employees or agents of the designated organization or the Insurance Department.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 24, 2006.

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of an emergency rule making, I.D. No. INS-15-06-00011-E, Issue of April 12, 2006.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of an emergency rule making, I.D. No. INS-15-06-00011-E, Issue of April 12, 2006.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of an emergency rule making, I.D. No. INS-15-06-00011-E, Issue of April 12, 2006.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of an emergency rule making, I.D. No. INS-15-06-00011-E, Issue of April 12, 2006.

Office of Mental Health

EMERGENCY RULE MAKING

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-15-06-00002-E

Filing No. 342

Filing date: March 23, 2006

Effective date: March 23, 2006

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

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

Specific reasons underlying the finding of necessity: These amendments increase the medicaid rate schedule associated with clinic treatment programs and day treatment programs serving children and makes certain other changes consistent with the enacted 2005-2006 state budget. These changes will avoid a reduction in services that would otherwise take place.

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase the medicaid rate schedule associated with certain clinic treatment and children's day treatment programs licensed under art. 31 of the Mental Hygiene Law.

Text of emergency rule: Part 588 of 14 NYCRR is amended as follows:

New subdivisions (e) and (f) are added to § 588.7 to read as follows:

(e) *The need for continuing day treatment benefits beyond 156 visits per benefit year shall be subject to the medical care utilization threshold requirements of 18 N.Y.C.R.R. Part 511, and shall be determined, in accordance with subdivision (f) of this section, no later than the 156th visit during the benefit year. Such determination shall include an estimate of the number of visits beyond 156 required for the recipient within the remaining benefit year. The need for continued continuing day treatment benefit beyond this estimated number of visits shall be determined at or prior to the provision of the estimated number of visits during the benefit year. The need for any additional revised estimates shall be determined accordingly.*

(f) *Determinations required in accordance with subdivision (e) of this section shall be:*

(1) *completed by the treating clinician;*

(2) *documented in the case record; and*

(3) *reviewable by the Office of Mental Health or its designated agent.*

Subdivision (a) of Section 588.13 is amended to read as follows:

(a) Reimbursement under the medical assistance program for outpatient programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title which serve adults with a diagnosis of mental illness and children with a diagnosis of emotional disturbance shall be in accordance with the following fee schedule. This section shall not apply to programs licensed by both the Office of Mental Health and the Department of Health.

(1) Reimbursement under the medical assistance program for clinic treatment programs operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to [Section 579.7] *subdivisions (i), (j) and (k) of this [Title] Section.*

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

Regular at least 30 minutes [\$66.00] \$71.94

Brief at least 15 minutes [33.00] 35.97

Group at least 60 minutes [23.10] 25.18

Collateral at least 30 minutes [66.00] 71.94

Group Collateral at least 60 minutes [23.10] 25.18

Crisis at least 30 minutes [66.00] 71.94

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates counties:

Regular at least 30 minutes [\$59.40] \$64.75

Brief at least 15 minutes [29.70] 32.37

Group at least 60 minutes [20.79] 22.66

Collateral at least 30 minutes [59.40] 64.75

Group Collateral at least 60 minutes [20.79] 22.66

Crisis at least 30 minutes [59.40] 64.75

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Regular at least 30 minutes [\$58.30] \$63.55

Brief at least 15 minutes [29.15] 31.77

Group at least 60 minutes [20.41] 22.25

Collateral at least 30 minutes [58.30] 63.55

Group Collateral at least 60 minutes [20.41] 22.25

Crisis at least 30 minutes [58.30] 63.55

(2) Reimbursement under the medical assistance program for clinic treatment programs operated by providers of services which did not receive State aid under article 41 of the Mental Hygiene Law during fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Regular at least 30 minutes [\$58.30] \$63.55

Brief at least 15 minutes [29.15] 31.77

Group at least 60 minutes [20.41] 22.25

Collateral at least 30 minutes [58.30] 63.55

Group Collateral at least 60 minutes [20.41] 22.25

Crisis at least 30 minutes [58.30] 63.55

(3) *The minimum duration of a group or group collateral visit at a school-based clinic program shall consist of the duration of a scheduled class period at the school in which the program is based, or 60 minutes, whichever is less.*

Sub-paragraphs (4) and (5) of § 588.13(a) are renumbered sub-paragraphs (5) and (6) are amended to read as follows:

(4) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in

accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$13.20 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.88 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours for any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.88 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

[(4)](5) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours	[\$66.00] \$70.01
Half day at least 3 hours	[33.00] 35.01
Brief day at least 1 hour	[22.00] 23.34
Collateral at least 30 minutes	[22.00] 23.34
Home at least 30 minutes	[66.00] 70.01
Crisis at least 30 minutes	[66.00] 70.01
Preadmission - full day at least 5 hours	[66.00] 70.01
Preadmission - half day at least 3 hours	[33.00] 35.01

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours	[\$63.80] 67.68
Half day at least 3 hours	[31.90] 33.84
Brief day at least 1 hour	[21.23] 22.52
Collateral at least 30 minutes	[21.23] 22.52
Home at least 30 minutes	[63.80] 67.68
Crisis at least 30 minutes	[63.80] 67.68
Preadmission - full day at least 5 hours	[63.80] 67.68
Preadmission - half day at least 3 hours	[31.90] 33.84

[(5)](6) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which did not receive State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City,

shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Full day at least 5 hours	[\$63.80] \$67.68
Half day at least 3 hours	[31.90] 33.84
Brief day at least 1 hour	[21.23] 22.52
Collateral at least 30 minutes	[21.23] 22.52
Home at least 30 minutes	[63.80] 67.68
Crisis at least 30 minutes	[63.80] 67.68
Preadmission - full day at least 5 hours	[63.80] 67.68
Preadmission - half day at least 3 hours	[31.90] 33.84

[(6)](7) Providers whose reimbursement under the medical assistance program for clinic, continuing day treatment, and/or day treatment has been supplemented in accordance with subdivision (g) of this section will have this additional reimbursement limited in total to an amount established by the Commissioner which shall be subject to the availability of appropriations in the Office of Mental Health's budget. Supplemental reimbursement received in excess of this threshold will be recovered in a succeeding year through the medical assistance recovery process authorized pursuant to Section 368-c of the Social Services Law.

Section 588.13 is amended by adding new subdivisions (i), (j), and (k) to read as follows:

(i) *Clinic treatment programs for which an operating certificate has been issued shall receive an adjustment to the fee schedules set forth in paragraph (1) of subdivision (a) of this Section if they are enrolled in a continuous quality improvement initiative implemented by the Commissioner. In order to be enrolled in such continuous quality improvement initiative, the program shall execute an agreement with the Office of Mental Health under which the provider agrees to participate in such initiative, and undertake such quality improvement measures as shall be developed by the Commissioner.*

(j) *Any program eligible to receive supplemental medical assistance reimbursement pursuant to subdivision (i) of this Section, and which fails at any time to meet the requirements set forth in the agreement executed pursuant to such subdivision, shall have its continuous quality improvement adjustment suspended until such time as the program meets such requirements, as determined by the Commissioner.*

(k) *A clinic treatment program that has been approved by the Office of Mental Health to provide services to children and adolescents during evening and weekend hours shall receive a rate enhancement for regular or collateral clinic visits provided to recipients under the age of 18 years, when such services are provided during weekdays commencing 6 p.m. or later, or on a Saturday or Sunday, provided, however, that an enhanced rate shall only be paid for one visit provided for a recipient on any given day.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 20, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Regulatory Impact Statement

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

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

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and Benefits: These amendments increase the medicaid reimbursement associated with certain outpatient treatment programs consistent with the enacted 2005-2006 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers, as well as improve the quality and availability of services. They will also effectuate the provision of the 2005-2006 state budget that eliminates the exemption from medicaid utilization thresholds for continuing day treatment programs, and clarifies the minimum duration of a group or group collateral visit for a school-based clinic is the shorter of 60 minutes or the duration of a scheduled class period at the school.

4. Costs:

a) Costs of regulated parties: There are no costs to providers associated with these amendments.

b) Costs to State and local government and the agency: Implementation of the children’s day treatment initiatives has been budgeted to cost New York State \$200,000 annually, and appropriations for the state share of medicaid are included on page 273, line 20, of Chapter 54 of the Laws of 2005. Implementation of clinic fee initiatives has been budgeted to cost New York State \$6,000,000 annually, and appropriations for the state share of medicaid are included in the \$609,468,000 Aid to Localities Local Assistance Account 001, which is set forth on page 268, line 29 of Chapter 54 of the Laws of 2005. The costs to local governments, for the local share of medicaid, will be equal to the state costs listed above.

5. Local Government Mandates: Other than the required local share of medicaid, noted in Section 4, these regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative was rejected as inconsistent with statutory requirements of the enacted budget.

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

10. Compliance Schedule: These regulatory amendments will be effective upon their adoption, and shall be deemed to have been effective on and after April 1, 2005.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increase associated with this rule is required by state statute, the enacted state budget for state fiscal year 2005-2006.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule impacts outpatient treatment program rates of reimbursement. The impact of the rate change will be to increase the medicaid reimbursement rates associated with outpatient programs in rural and non-rural areas. This will support the continued provision of these vital programs which serve children, adolescents and adults.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), and 16.33; and Executive Law, section 845-b

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

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity, above, are as follows: The regulations require fingerprinting and criminal history record checks for various individuals who provide services to people with developmental disabilities in the OMRDD system. The regulations are necessary to keep certain convicted criminals, including violent felons and sexual predators, out of positions that include regular and substantial contact with people with developmental disabilities. If regulations were not adopted as an emergency measure, convicted criminals could have unrestricted and unsupervised contact with consumers as new employees or volunteers or family care providers, which would endanger the health, safety and general welfare of people receiving services. Consumers could be unnecessarily victimized by people with criminal history records for the period of time between April 1, 2005 and the earliest date that regulations could be finalized using the regular regulatory process.

Subject: Requirements related to criminal history record checks.

Purpose: To promulgate regulations necessary to implement chapter 575 of the Laws of 2004, concerning criminal history record checks. The regulations require that agencies, sponsoring agencies and providers of services request history record checks for specified employees, volunteers, family care providers and parties who are to reside in a family care home.

Substance of emergency rule: • Effective March 27, 2006. Replaces similar emergency regulations that were effective April 1, June 30, September 28 and December 27, 2005.

- Changes in regulatory provisions (compared to December 27 emergency regulations)
 - The regulation limits the rosters that must be maintained and submitted. Only those employees and volunteers who are subject parties (as opposed to all employees and volunteers) must be listed. In addition, former subject parties must only be listed if they stopped being subject parties (e.g. no longer an employee) during the past year.
 - Beginning in 2007, the annual statement submitted by approved providers must be signed by the person primarily responsible for local operations, instead of the chief executive officer.
- Applies to all providers, including residences (ICFs, IRAs, and CRs), family care homes, day programs (day treatment, day habilitation, day training, sheltered workshops, prevocational services), HCBS waiver services, Article 16 clinics, family support services, and individualized support services.
- Applies to some entities that have a contract with OMRDD.
- Establishes a requirement that providers of services apply to become “approved providers” if they contract with a voluntary agency or DDSO and provide transportation services or staff.
- Requires agencies to appoint an “authorized party” to request criminal history record checks and receive the results.
- Requires that prospective employees, volunteers, and operators that have “regular and substantial unsupervised or unrestricted physical contact” with people receiving services consent to a criminal history record check.
- Requires that agencies ask applicants about pending criminal charges, in addition to convictions.
- Defines employees of the provider that are subject to a criminal history record check to include people that are directly employed by the provider and other people providing similar services for the provider who are employed by other entities, such as temporary employment agencies or contractors.
- Includes a list of jobs that are presumed to include this type of contact.
- Provides that while the results of criminal history record checks are pending, employees and volunteers may not have unsupervised physical contact with people receiving services. Regulations specify restrictions placed on “temporarily approved provisional” employees and volunteers.
- Provides that oversight of temporarily approved provisional employees and volunteers can be provided by an employee who has completed required training in incidents and abuse, and who was not subject to a criminal history record check or whose criminal history record check has been completed.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Criminal History Record Checks

I.D. No. MRD-15-06-00010-E

Filing No. 364

Filing date: March 27, 2006

Effective date: March 27, 2006

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

Action taken: Addition of sections 633.22 and 633.98 and amendment of sections 633.5, 633.99, 635-10.5, 679.6, 680.12, 681.14, 687.4, 687.8, and 690.7 of Title 14 NYCRR.

- Provides that temporarily approved provisional employees and volunteers may not be assigned personal care activities which require privacy unless the employee providing oversight is in the same room.
 - Provides that temporarily approved provisional employees and volunteers may not work the night shift in a residence.
 - Requires that requests for criminal history record checks be made through OMRDD. If a person has already had a check through OMRDD or OMH, providers may be able to use an expedited process without additional fingerprinting if OMRDD criteria are met.
 - Provides that OMRDD will make a determination in each case either to issue a denial (or direct the provider to issue a denial) or not to issue a denial (or not direct the provider to issue a denial). The determination process is put on hold for pending felony charges and may be put on hold for misdemeanor charges.
 - Establishes standards for OMRDD determinations that replicate the standards in the statute, with certain specified crimes that are presumptive disqualifying crimes. A new section 633.98 lists these crimes.
 - Provides that OMRDD will send a summary of the criminal history record information to agencies, which can assist in further decision-making by the agency (such as evaluating whether the applicant provided false information about convictions or pending charges). Approved providers will not receive the summary unless OMRDD is issuing a denial.
 - Provides that once a person has had a criminal history record check, OMRDD will let the provider know about future arrests. When they are notified, providers must take appropriate steps to protect people receiving services.
 - Requires that providers notify OMRDD when employees and volunteers separate from service, so that OMRDD can remove the name from its database.
 - Includes a requirement that agencies and providers of services submit an annual criminal history record check statement to OMRDD.
 - Identifies actions that OMRDD may take for non-compliance.
 - Makes minor changes in current requirements to assess applicant backgrounds.
- Family care homes.
- Includes family care respite providers, and adults living in homes where respite is provided.
 - Requires prospective family care providers and people who are to reside in a family care home and who are age 18 years and older to consent to a criminal history record check (except for individuals receiving family care services).
 - Requires current family care providers and residents of a family care home to consent to a criminal history record check, at the time of recertification.
 - Establishes that checks related to family care homes are requested by the sponsoring agency (DDSOs for most family care homes) and information is received by the sponsoring agency.
 - Requires criminal history record checks for current residents at the time of their 18th birthday.
 - Requires that a criminal history record check be conducted prior to or shortly after a new adult moves into the family care home. Additional processes are specified to safeguard people receiving services before the results of the criminal history record check are received.
 - Requires notifications to OMRDD about residency and provider status so that names can be removed from the OMRDD database.
 - Requires additional notifications by family care providers about changes in residents of the family care home and arrests of household members.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 24, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with

respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in Section 13.07 of the New York State Mental Hygiene Law.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in Section 13.09(b) of the Mental Hygiene Law.

c. OMRDD's authority, as stated in Section 16.33 of the Mental Hygiene Law, to require providers of services to request that a criminal history record check be conducted in specified situations.

d. OMRDD's responsibility, pursuant to section 845-b of the Executive Law, to promulgate regulations concerning criminal history record checks.

2. Legislative Objectives: These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law. The promulgation of these amendments will enhance the safety of people with developmental disabilities who receive services certified, authorized, approved or funded by OMRDD. Providers of services, with some exceptions, are required to comply, including certified residences and day programs, HCBS waiver services, Medicaid Service Coordination, family support services, and individual support services.

3. Needs and Benefits: The new law and these implementing regulations require fingerprinting and criminal history record checks for prospective employees and volunteers, family care providers and adults who are to reside in a family care home.

Based on the results of the criminal history record check, individuals who have been convicted of certain types of crimes will be denied positions which involve regular and substantial unsupervised or unrestricted physical contact with people receiving services. The results of the check will also enable providers (except for "approved providers") to verify criminal history record information provided in applications and make their own determinations about employment suitability, when OMRDD has not directed the denial of the application for the "subject party."

The regulations also include measures that can be used at the discretion of the provider (except for "approved providers") to temporarily approve new applicants while the results of the criminal history record check are pending. During this time, the activities of these employees and volunteers must be monitored. In this manner, new employees can be hired while people receiving services are safeguarded.

The new law and regulations will enhance consumer safety by keeping certain known offenders who have been convicted of certain crimes out of jobs that involve regular and substantial unsupervised or unrestricted physical contact with people receiving services.

The regulations extend requirements to employees of entities under contract with provider agencies.

In addition, the regulations establish mechanisms for some providers of services to become "approved providers." Providers of services that contract with agencies to provide transportation services or staff are required to apply to OMRDD to become "approved providers."

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD estimates that the new requirements will result in approximately 39,305 requests for a criminal history record check on an annual basis. The total annual cost is estimated to be approximately \$6,950,000. This cost includes the costs of the processing fee charged by the Division of Criminal Justice Services, which is \$75 per check, and the related costs, including administrative costs, which are incurred by OMRDD.

OMRDD estimates that approximately 79 percent of the annual aggregate cost will be eligible for Medicaid funding. Therefore, approximately \$5,500,000 of the total costs will be subject to a 50 percent Federal share, and approximately \$1,452,000 will be borne entirely by the State. The new requirements will therefore result in the expenditure of approximately \$2,750,000 in Federal funds, and approximately \$4,202,000 in costs to the State.

There will be no cost to local governments as a result of the new requirements.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. The new requirements will not generally result in any costs to private regulated parties.

For programs eligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be a state-paid item, so that providers will not be incurring out-of-pocket expenses. These expenses will be considered an allowable cost in the rates and fees established for the programs.

For programs ineligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be borne by the State.

OMRDD will make facilities available for fingerprints to be taken at no out-of-pocket cost to the provider or subject party. However, OMRDD is permitting the provider or subject party to choose to use another entity to take the fingerprints (e.g. a local police department or some voluntary agencies) which may charge for that service. OMRDD is not providing reimbursement for those charges, so this cost must be borne by the provider.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Chapter 575 of the Laws of 2004 requires two forms to be developed for use in the process of requesting criminal history record information. The forms are an informed consent form to be completed by the subject party and the request form to be completed by the authorized party designated by the provider. Temporarily approved employees and volunteers are required to complete an attestation regarding incidents/abuse. Adults who are to reside in a family care home must provide an attestation regarding convictions and pending charges. In addition, other forms will be required by OMRDD, such as a form to designate an authorized party, forms to be completed when someone who has had a criminal history record check is no longer subject to the check, and an annual statement completed by the chief executive officer.

The regulations also contain a requirement to keep a current roster of subject parties.

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

It should be noted that the Office of Mental Health (OMH) has a similar statutory requirement and is promulgating its own regulations on this subject, as required via Chapter 575. Staff from OMRDD and OMH have met to explore opportunities to share fingerprint technology across both Agencies. In terms of technology, OMH and OMRDD hope to integrate systems at a later date to arrive at a single technology solution. In anticipation of that effort, OMRDD and OMH selected the same vendor, which was already under contract to provide a LiveScan solution for a joint project between other state agencies. To facilitate future integration, a common, consistent hardware and software platform was purchased by OMH and OMRDD. In addition, OMRDD has begun efforts with the Fingerprint technology vendor to electronically share between OMRDD and OMH. This would facilitate staff from OMRDD providers being printed at OMH locations, as well as staff from OMH providers being printed at OMRDD locations. OMRDD has had preliminary discussions with the vendor as to the architecture, software and connectivity required to accomplish this goal.

With the release of enhanced LiveScan stations and software, the capability exists to share fingerprints electronically through the NyeNet. As all NYS Agencies utilize the NyeNet, this capability provides for future expansion beyond OMH for State Agencies who also utilize this technology. In addition, this will also allow voluntary agencies that serve both OMH and OMRDD consumers to forward prints to the appropriate State Agency for processing.

OMRDD has also expanded the number of sites available for electronic fingerprinting by implementing fingerprint technology at a limited number of voluntary agencies. The technology utilized is equivalent to that being used at OMRDD DDSOs and increases the number of locations to serve large population centers, as well as more remote locations where there are no DDSO Livescan stations. Support is being provided by OMRDD to ensure the success of these new sites. Additional expansion in the future is anticipated in response to the numerous requests from voluntary agencies for this capability.

8. Alternatives: OMRDD had considered standards requiring that the oversight provided for temporarily approved provisional employees and volunteers could only be provided by a supervisor or someone with one year's experience. However, OMRDD determined that this requirement

might be difficult for some providers to implement and would not enhance consumer safety.

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

10. Compliance Schedule: OMRDD filed a similar emergency regulation on April 1, 2005 to implement Chapter 575 of the Laws of 2004, which became effective on April 1, 2005. Subsequent emergency regulations were filed June 30, 2005, September 28, 2005 and December 27, 2005.

OMRDD intends to finalize the proposed amendments within the time frames provided for by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Effect on small business: These regulatory amendments will apply to providers of services that operate all programs certified, authorized, approved or funded through contract by OMRDD, except for the State and some other specified entities. In addition, small businesses providing transportation services or staff that contract with voluntary agencies or NYS are required to comply with provisions related to "approved providers."

OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: The new law and implementing regulations require a variety of compliance activities. These activities include: developing policies and procedures, designating authorized parties, completing criminal history record check request forms, denying employment at the direction of OMRDD, reviewing the summary of criminal history record information, evaluating the safety of consumers when a subject party is subsequently arrested, developing and maintaining records, and notifying OMRDD when employees separate from service.

3. Professional services: No additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no costs to local governments.

For programs eligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be a state-paid item, so that providers will not be incurring out of pocket expenses. These expenses will be considered an allowable cost in the rates and fees established for the programs.

For programs ineligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be borne by the State.

OMRDD will make facilities available for fingerprints to be taken at no out-of-pocket cost to the provider or subject party. However, OMRDD is permitting the provider or subject party to choose to use another entity to take of the fingerprints (e.g. a local police department or some voluntary agencies) which may charge for that service. OMRDD is not providing reimbursement for those charges, so this cost must be borne by the provider.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: These amendments impose no adverse economic impact on local governments. As mentioned in the Regulatory Impact Statement, OMRDD had considered requiring that oversight could only be provided by supervisors or employees with at least one year of experience. OMRDD determined that this requirement might be difficult for some providers to implement and would not enhance consumer safety, and has minimized any related adverse economic impact on providers of services by not incorporating these qualifications for the employees providing oversight.

7. Small business and local government participation: OMRDD convened a Criminal Background Check Advisory Group which included consumer representatives, family members, and provider representatives. The group met on Nov. 8, 2004 and on March 22, 2005. In addition, the OMRDD Criminal Background Check Regulations Workgroup included provider representatives, and met on four occasions beginning in December, 2004. Presentations were made to various affected groups including the Family Care Advisory Council and the Family Support Services Advisory Council. A series of informational mailings were sent to affected

providers beginning in January, 2005. OMRDD also held a series of twelve Executive Overview sessions in February and March in various locations from Buffalo to Long Island and also presented six video conferences to locations throughout the State. A series of training sessions was conducted in September, 2005 related to contractors. OMRDD has also posted relevant information on its website at www.omr.state.ny.us.

OMRDD distributed similar emergency regulations in April, June, September and December of 2005, and posted the regulations on the OMRDD website. No comments were received regarding the emergency regulations.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). The amendments are concerned with requiring that providers of services request criminal history record checks for prospective employees and volunteers, and that checks are requested for family care providers and adult household members of family care homes. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Job Impact Statement

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and/or employment opportunities. It is expected that the amendments will have a modest positive impact on jobs/employment opportunities because OMRDD anticipates creating new employment opportunities to take fingerprints, to process the results of the criminal history record check, and to make determinations based on the results.

\$.05979	Over 5,000 kWh	\$ 1.2558
	<u>Small Commercial SC2</u>	
\$ 2.50	Customer Charge	\$ 5.00
Non-Winter Rate		Non-Winter Rate
(May-October)		(May-October)
\$.04571	Energy Charge, per kWh	\$.04563
Winter Rate		Winter Rate
(November-April)		(November-April)
\$.05435	Energy Charge, per kWh	\$.05765
	<u>Large Commercial SC3</u>	
\$ 4.50	Demand Charge, per kW	\$ 6.00
\$.02292	Energy Charge, per kWh	\$ 0.2084
	<u>Olympic Area SC4</u>	
\$ 6.00	Demand Charge, per kW	\$ 5.50
\$.02429	Energy Charge, per kWh	\$.02930
	<u>Security Outdoor Lighting SC5</u>	
	Per month, per unit of:	
\$ 7.31	175 Watts Mercury Vapor	\$ 9.73
\$ 16.08	400 Watts Mercury Vapor	\$ 21.39
\$ 6.58	150 High-Pressure Sodium	\$ 8.75
\$ 11.45	250 High-Pressure Sodium	\$ 15.23
\$ 17.38	400 High-Pressure Sodium	\$ 23.12
	<u>Street Lights SC6</u>	
\$ 3.05	Facilities Charge, per Lamp	\$ 4.09
\$.02667	Energy Charge, per kWh	\$.02279

¹ Average annual purchase power adjustment reflected in former and adopted rates.

Final rule as compared with last published rule: A substantial revision was made in the following: Small, Commercial, (SC2), Customer, Charge. **Text of rule and any required statements and analyses may be obtained from:** Angela D. Graves, Power Authority of the State of New York, 123 Main St., White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

Assessment of Public Comment:

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

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-50-05-00002-A

Filing date: March 28, 2006

Effective date: 1st full billing period after the date of filing this notice

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

Action taken: Revision in rates for the Village of Lake Placid.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity. This increase in rates is not the result of a Power Authority rate increase to the village.

Text of final rule:

Lake Placid Village, Inc. Comparison of Former and Adopted Net Monthly Rates			
<u>Former¹ Rates</u>		<u>Adopted¹ Rates</u>	
\$ 2.50	<u>Residential SC1</u> Customer Charge	\$ 5.05	
Non-Winter Rate (May-October)		Non-Winter Rate (May-October)	
\$ 0.3935	Energy Charge, per kWh	\$.03389	
Winter Rate (November-April)		Winter Rate (November-April)	
\$.03935	Energy Charge, per kWh	\$.03389	
\$.05979	First 1,500 kWh	\$.05638	
	1,501-4,999 kWh		

NOTICE OF ADOPTION

Rates for Power and Energy

I.D. No. PAS-05-06-00016-A

Filing date: March 28, 2006

Effective date: the first full billing period following the date of this filing

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

Action taken: Revised electricity rates for the Otsego Electric Cooperative.

Statutory authority: Public Authorities Law, section 1005

Subject: Rates for power and energy.

Purpose: To protect the integrity of the system.

Text of final rule: March 28, 2006

Otsego Electric Cooperative
Comparison of Former and Adopted Net Monthly Rates

<u>Former¹ Rates</u>		<u>Adopted¹ Rates</u>
\$ 7.50	<u>General Service—Residential SC1</u> Customer Charge	\$ 10.00
\$.0839	Energy Charge, per kWh	\$.0885
\$ 8.10	<u>Small Commercial—Single-Phase SC2</u> Customer Charge	\$ 16.20
\$.0824	Energy Charge, per kWh	\$.0815
\$ 5.30	<u>General Power—Multiphase SC3A</u> Demand Charge	\$ 10.60
\$.0730	Energy Charge, per kWh	\$.0573
\$ 5.30	<u>General Power—Single-Phase SC3B</u> Demand Charge	\$ 10.30
\$.0693	Energy Charge, per kWh	\$.0261
	<u>Security Lighting SC34</u>	

(charge per lamp, per month)
 \$8.53 175 Mercury Vapor \$8.73

¹ Average annual purchased power adjustment reflected in former and adopted rates.

Final rule as compared with last published rule: A substantial revision was made in the following: GS-R SC1, GP-MP SC3A, SL SC34, SC-SP SC2, GP-SP SC3B.

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

Assessment of Public Comment:

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

Public Service Commission

NOTICE OF ADOPTION

United Water New York Inc.'s Waiver of Rules Tariff

I.D. No. PSC-40-05-00013-A
Filing date: March 23, 2006
Effective date: March 23, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order approving the request of Key Construction for a waiver of the requirements of individual water meters and for the installation of a master meter at 201 N. Main St., Village of Spring Valley, Rockland County, in the service territory of United Water New York, Inc.

Statutory authority: Public Service Law, section 89-c(1), (2), (10)(a) and (10)(e)

Subject: A waiver of section 3.4(D) of the United Water New York, Inc.'s waiver of rules tariff to allow master-metering of a senior living facility.

Purpose: To waive section 3.4(D) of the United Water New York, Inc.'s tariff to allow master-metering of a senior living facility.

Substance of final rule: The Commission approved the request of Key Construction to waive United Water New York's individual metering tariffs and allow master metering at 201 North Main Street, Spring Valley, New York.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-W-0857SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Riverdale Heights LLC

I.D. No. PSC-01-06-00009-A
Filing date: March 22, 2006
Effective date: March 22, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order in Case 05-E-1573 approving the petition of Riverdale Heights LLC to sub-

meter electricity at 640 W. 237th St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the request of Riverdale Heights LLC to submeter electricity at 640 W. 237th St., New York, NY.

Substance of final rule: The Commission approved a request by Riverdale Heights LLC to submeter electricity at 640 West 237th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-1573SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Demand Response Program

I.D. No. PSC-15-06-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9 to become effective June 21, 2006.

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

Subject: Emergency Demand Response Program (EDRP).

Purpose: For approval to reinstate its EDRP contained in Rider V.

Substance of proposed rule: On March 15, 2006, Consolidated Edison Company of New York, Inc. (Con Edison) filed a proposal tariff amendment to revise Rider V—Emergency Demand Response Program (EDRP) to reinstate its EDRP which expired on October 31, 2005. This proposal is made in conjunction with the New York Independent System Operator's extension of its EDRP which was approved by the Federal Energy Regulatory Commission on October 25, 2005. The Commission may approve, reject or modify, in whole or in part, Con Edison'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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-E-2054SA34)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Day-Ahead Demand Response Program and Emergency Demand Response Program

I.D. No. PSC-15-06-00014-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 to become effective June 21, 2006.

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

Subject: Day-Ahead Demand Response Program (DADRP) and Emergency Demand Response Program (EDRP).

Purpose: For approval to reinstate its DADRP and its EDRP.

Substance of proposed rule: On March 17, 2006, Orange and Rockland Utilities, Inc. (O&R) filed proposed tariff amendments to reinstate its Day-Ahead Demand Response Program (DADRP) and its Emergency Demand Response Program (EDRP) which expired on October 31, 2005. This proposal is made in conjunction with the New York Independent System Operator's extension of its DADRP and EDRP which was approved by the Federal Energy Regulatory Commission on October 25, 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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-E-2054SA35)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Certain Cable System Properties, Franchises and Certificates of Confirmation between Milestone Communications, L.P. and Home Entertainment Company

I.D. No. PSC-15-06-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a joint petition of Milestone Communications, L.P. and Home Entertainment Company for transfer of certain cable system properties, franchises and certificates of confirmation from Milestone Communications, L.P. to Home Entertainment Company.

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system properties, franchises and certificates of confirmation of Milestone Communications, L.P. to Home Entertainment Company.

Purpose: To approve the transfer.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a joint petition by Milestone Communications, L.P. and Home Entertainment Company for the transfer of certain cable systems, properties, franchises and certificates of confirmation from Milestone Communications, L.P. to Home Entertainment Company.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(06-V-0324SA1)

Department of State

EMERGENCY RULE MAKING

Manufacturer's Warranty Seals and Installer's Warranty Seals to Manufactured Homes

I.D. No. DOS-15-06-00001-E

Filing No. 339

Filing date: March 22, 2006

Effective date: March 22, 2006

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

Action taken: Addition of Part 1210 to Title 19 NYCRR.

Statutory authority: L. 2005, ch. 729, sec. 4

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve the general welfare and because time is of the essence. This rule implements the provisions of new Article 21-B (Manufactured Homes) of the Executive Law, which was added by Chapter 729 of the Laws of 2005, and which became effective on January 1, 2006. This rule establishes procedures for obtaining the manufacturer's warranty seals and installer's warranty seals required by Article 21-B; establishes standards regarding the initial training, certification, and continuing education of manufacturers, retailers, installers, and mechanics of manufactured homes; establishes procedures for the resolution of disputes relating to manufactured homes; and otherwise implements the provisions Article 21-B of the Executive Law. Adoption of this rule on an emergency basis preserves the general welfare by permitting the continuation of all aspects of the manufactured housing industry in this State without interruption.

Subject: Obtaining and attaching manufacturer's warranty seals and installer's warranty seals to manufactured homes; certification of manufacturers, retailers, installers, and mechanics of manufactured homes; and administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes.

Purpose: To implement art. 21-B of the Executive Law, as added by L. 2005, ch. 729.

Substance of emergency rule: Chapter 729 of the Laws of 2005 added Article 21-B (Manufactured Homes) of the Executive Law. This emergency rule has been adopted to implement the provisions of the new Article 21-B. This rule establishes procedures for obtaining and the manufacturer's warranty seals and installer's warranty seals which must be attached to manufactured homes. This rule establishes the qualifications for certification of manufacturers, retailers, installers, and mechanics of manufactured homes. This rule establishes administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes. This rule also establishes fees relating to warranty seals, certifications, approval of instructional providers and approval of courses.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 19, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: jball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

The statutory authority for this rule is section 4 of Chapter 729 of the Laws of 2005, which provides that the Department of State is authorized and empowered to take such steps, including the promulgation of rules and regulations, as may be necessary for the proper implementation of Article 21-B (Manufactured Homes) of the Executive Law on January 1, 2006. Article 21-B (Manufactured Homes) of the Executive Law was added by Chapter 729 of the Laws of 2005, and took effect on January 1, 2006. A rule similar to this rule was adopted on an emergency basis on December 22, 2005. That rule expired on March 21, 2006. This rule, which will be effective on the date of filing (March 22, 2006), implements Article 21-B.

2. LEGISLATIVE OBJECTIVES.

Article 21-B of the Executive Law was enacted for the purpose of ensuring that manufactured homes are installed and serviced in a professional manner; ensuring that disputes regarding the manufacture, installation, and servicing of manufactured homes be resolved fairly and expeditiously; providing a degree of security for the payment of legitimate claims; and otherwise implementing the provisions of the federal Manufactured Housing Improvement Act of 2000 (PL 106-569). The Manufactured Housing Improvement Act of 2000 requires States to enact requirements for the licensing or certification of installers of manufactured homes, training, dispute resolution, and other matters relating to manufactured homes. Article 21-B of the Executive Law requires manufacturers and installers to attach warranty seals to manufactured homes installed in this State, requires manufacturers, retailers, installers, and mechanics to be certified by the Department of State, and requires the Department of State to provide administrative procedures for the resolution of disputes.

The rule now being adopted by the Department of State establishes procedures for obtaining and attaching the warranty seals required by Article 21-B; establishes standards for certification as a manufacturer, retailer, installer, or mechanic of manufactured homes; establishes administrative dispute resolution procedures; and establishes fees.

3. NEEDS AND BENEFITS.

This rule establishes procedures regarding manufacturer's and installer's warranty seals. These procedures are necessary to implement the warranty seal provisions of Article 21-B. These provisions permit manufacturers and installers to obtain the warranty seals, specify the manner in which and place where the warranty seals are to be attached, establish the fees to be paid by manufacturers and installers for obtaining the warranty seals, and establish the maximum fees that can be charged by manufacturers and installers for attaching the warranty seals.

This rule establishes qualifications and procedures for obtaining certification as a manufacturer, retailer, installer, or mechanic. These qualifications and procedures are necessary to implement the certification provisions of Article 21-B. The qualifications established by this rule include minimum experience and education requirements for retailers, installers, and mechanics; initial training requirements for installers and mechanics; and continuing education requirements for all classes of certificate holders. By requiring certification, specifying minimum qualifications for certification, and specifying continuing education requirements, this rule will benefit purchasers of manufactured homes by helping to ensure that homes will be installed in a professional manner. In addition, this rule requires each certificate holder to file a surety bond or a certificate (designated as a "deposit account certificate") evidencing the existence of a deposit account which is maintained with a financial institution and which is pledged to the Department of State (except that a person holding a limited certificate will not be required to file his or her own surety bond or deposit account certificate, provided that he or she is covered by his or her employer's surety bond or deposit account certificate); these requirements will benefit owners of manufactured homes by providing a measure of assurance that a legitimate claim relating to the delivered condition, installation, service, or construction of a manufactured home will be satisfied.

The rule establishes procedures for the resolution of disputes involving the delivered condition, installation, service or construction of manufactured homes. These procedures are necessary to implement the dispute resolution provisions of Article 21-B. The procedures established by this rule include an informal dispute resolution process and an administrative hearing process for disputes which cannot be resolved informally. These procedures will benefit manufacturers, retailers, installers, mechanics, lending entities, and manufactured home owners by permitting expeditious and cost-effective resolution of disputes.

The rule establishes fees, as required by Article 21-B. The fees will defray the cost of administering Article 21-B.

4. COSTS.

a. Cost to regulated parties for the implementation of and continuing compliance with this rule.

This rule will require manufacturers and installers to obtain warranty seals to be attached to manufactured homes. Manufacturers will pay \$125 per seal, and installers will pay \$35 per seal if they request 5 or fewer, or \$25 per seal if they request 6 or more. This rule will also permit manufacturers and installers to charge purchasers a fee for attaching such seals. The fee that manufacturers and installers will be permitted to charge for attaching the seals will cover their cost of obtaining the seals and provide an additional sum, between \$15 and \$25, to cover anticipated administrative expenses.

This rule will require manufacturers, retailers, installers, and mechanics to be certified by the Department of State. The fee for certification for a period of 2 years will be \$200 for manufacturers, retailers, and installers, and \$100 for mechanics. However, a person employed by a person who or a business entity which is certified may apply for a limited certificate, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer. The fee for a limited certificate will be \$25 for the 2-year term of the limited certificate.

A certified party must also file a surety bond or a deposit account certificate with the Department of State (provided, however, that person who holds a limited certificate, and who is covered by the surety bond or deposit account certificate filed by his or her employer, will not be required to file his or her own surety bond or deposit account certificate). Based on discussions with a representative of the insurance industry, the Department of State estimates that the premiums to be paid for surety bonds having terms of 2 years will be between \$800 and \$1,200 for the \$50,000 surety bond to be filed by a manufacturer, between \$400 and \$600 for the \$25,000 surety bond to be filed by a retailer, approximately \$200 for the \$10,000 surety bond to be filed by an installer, and approximately \$200 for the \$5,000 surety bond to be filed by a mechanic.

A person certified as an installer will be required to complete 16 hours of initial training prior to certification, and a business entity certified as an installer will be required to employ at least one person who has completed such initial training and who is certified by the Department of State. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department of State estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$200 and \$300.

A person certified as a mechanic will be required to complete 6 hours of initial training prior to certification, and a business entity certified as a mechanic will be required to employ at least one person who has completed such initial training and who is certified by the Department of State. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department of State estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$100 and \$125.

A person certified as a manufacturer, retailer, installer, or mechanic will be required to complete 3 hours of continuing education every 2 years, and a business entity certified as a manufacturer, retailer, installer, or mechanic will be required to employ at least one person who has completed such continuing education and who is certified by the Department of State. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department of State estimates that the fees that will be charged by instructional providers who provide such continuing education will be approximately \$50.

A private trade association or other entity applying for approval as an instructional provider will be required to pay \$100 once every 2 years. An approved instructional provider applying for approval of a course it wishes to provide will be required to pay \$50 plus \$5 for each student who takes the course.

b. Costs to the Department of State:

The Department of State anticipates that the cost to the Department of State to administer the programs contemplated by Article 21-B will be approximately \$490,000 per year. Those costs include the costs associated with the 5 employees that the Department of State anticipates it will need to administer the programs. The costs of administering Article 21-B are largely attributed to the statute and not significantly to this implementing rule.

c. Costs to other State agencies:

This rule does not impose any costs on other State agencies.

d. Cost to local governments:

This rule does not impose any costs on local governments.

5. PAPERWORK.

Under this rule, manufacturers and installers will be required to file written requests for warranty seals; installers will be required to file quarterly reports of installations performed; manufacturers, retailers, installers, and mechanics will be required to file written applications for certification and for periodic renewal of certification; a private trade organization or other entity wishing to provide initial training or continuing education will be required to file a written application for approval as an instructional provider and for periodic renewals of such approval; approved instructional providers will be required to file written applications for approval or courses to be provided; and instructional providers will be required to file reports of each course presented. It is the intention of the Department of State to develop and implement request, application, and report forms, to post such forms on the Department of State's web page, and otherwise to make such forms freely available to regulated parties.

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any duty on local governments. (However, as indicated in the Regulatory Flexibility Analysis, this rule does specify that no certificate of occupancy shall be issued for any manufactured home installed on or after January 1, 2006 unless the required warranty seals have been attached to the home; this provision will affect every local government that issues certificates of occupancy.)

7. DUPLICATION.

The Department of State is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

8. ALTERNATIVES.

The Department of State has not considered any significant alternatives to this rule.

9. FEDERAL STANDARDS.

The Department of State is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE.

Article 21-B became effective on January 1, 2006, and many of its provisions took effect on that date. However, Article 21-B does not require manufacturers, retailers, installers, and mechanics to be certified until July 1, 2006.

This rule can be complied with immediately. This rule permits manufacturers and installers to request warranty seals prior to July 1, 2006 even if they are not yet certified. Therefore, a manufacturer or installer need not wait until it has applied for and obtained certification before it can request warranty seals. This rule also establishes the qualifications for certification; these provisions provide regulated parties with the information necessary to apply for and obtain the required certification prior to July 1, 2006. This rule also includes transitional provisions, as required by section 3 of Chapter 729 of the Laws of 2005, that will permit installers and mechanics to obtain temporary certification prior to completion of the initial training requirements that otherwise would apply.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule applies to all persons and all business entities who manufacture, sell, install, or service manufactured homes, including all small businesses that manufacture, sell, install, or service manufactured homes. The Department of State estimates that this rule will apply to approximately 268 small businesses engaged in the retail selling of manufactured homes and approximately 100 small businesses engaged in the installation of manufactured homes for buyers. This rule will also apply to small businesses that "service" (i.e., modify, alter or repair the structural systems of) manufactured homes; however, the Department of State is unable to determine at this time the number of small businesses that service manufactured homes. This rule will also apply to any small business that manufactures or produces manufactured homes. The Department of State estimates that this rule will apply to approximately 36 manufacturers; however, the Department of State believes that few, if any, of such manufacturers are small businesses.

This rule does not apply directly to local governments. However, this rule does specify that no certificate of occupancy shall be issued for any manufactured home installed on or after January 1, 2006 unless the required warranty seals have been attached to the home. This provision will affect every local government that issues certificates of occupancy.

2. COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacturer's

warranty seal is not required.) The seals are to be requested in writing, on a form to be supplied by or otherwise acceptable to the Department of State.

This rule requires installers to file quarterly reports with the Department of State specifying, with respect to each manufactured home installed by the installer during the reporting period covered by such report, the location where such manufactured home was installed, the owner of such manufactured home at the time of installation, the type or model of such manufactured home, the manufacturer of such manufactured home; and the written certification of the installer that the installation of such manufactured home meets the standards of the New York State Uniform Fire Prevention and Building Code. The quarterly reports are to be filed on forms provided by or otherwise acceptable to the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. Applications for certification are to be in writing, on forms provided by or otherwise acceptable to the Department of State. The qualifications for obtaining and retaining certification are summarized as follows:

(a) Each certificate holder must file a surety bond or a certificate (designated as a "deposit account certificate") evidencing the existence of a deposit account which is maintained with a financial institution and which is pledged to the Department of State. However, a person who is employed by a person who or business entity which is certified may apply for a limited certificate, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer. The holder of a limited certificate is not required to file a surety bond or deposit account certificate, provide that his or her employer has filed an acceptable surety bond or acceptable deposit account certificate.

(b) A certified manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes.

(c) A person certified as a retailer, installer, or mechanic must have at least a high school education, or the equivalent. A business entity certified as a retailer, installer, or mechanic must employ at least one person who has at least a high school education, or the equivalent, and who is certified by the Department of State.

(d) A person certified as a retailer, installer, or mechanic must satisfy specified experience requirements prior to certification. A business entity certified as a retailer, installer, or mechanic must employ at least one person who satisfies the specified experience requirements and who is certified by the Department of State.

(e) A person certified as an installer or as a mechanic must satisfy specified initial training requirements prior to certification. (The rule includes transitional provisions which will permit a person who has not completed the initial training, but who otherwise qualifies for certification as an installer or mechanic, to obtain temporary certification, to be valid for a period of one year, prior to completion of the initial training.) A business entity certified as an installer or mechanic must employ at least one person who has satisfied the specified initial training requirements and who is certified by the Department of State.

(f) A person certified as an installer or mechanic must pass a written examination prior to certification. (This rule includes reciprocity provisions, which permit a person certified or licensed as an installer or mechanic by another State to obtain certification in this State without taking the written examination, provided that such person satisfies all other requirements for certification in this State.) A business entity certified as an installer or mechanic must employ at least one person who has passed the written examination and who is certified by the Department of State.

(g) A person certified as a manufacturer, retailer, installer, or mechanic must satisfy specified continuing education requirements every 2 years. A business entity certified as a manufacturer, retailer, installer, or mechanic must employ at least one person who satisfies the specified continuing education requirements and who is certified by the Department of State.

(h) Each certified business entity must employ at least one certified person.

(i) At least one person certified by the Department of State as an installer must be present at the home site during the installation of a manufactured home.

(j) At least one person certified by the Department of State as a mechanic must be present at the home site during the performance of any service.

(k) Any person or business entity owning or operating more than one manufacturing plant that manufactures, delivers, or sells manufactured homes in the State of New York shall be required to obtain a separate certification as a manufacturer for each such manufacturing plant.

(l) Any person or business entity owning or operating more than one retail sales location in the State of New York shall be required to obtain a separate certification as a retailer for each such retail sales location.

This rule requires any private trade association or other entity wishing to provide initial training courses or continuing education courses to apply to the Department of State for approval as an instructional provider. This rule requires approved instructional providers to apply to the Department of State for approval of each course it proposes to provide. All applications are to be submitted in writing, on forms provided by or otherwise acceptable to the Department of State. Instructional providers are required to keep records showing the date and location of each course presentation and the names and addresses of each student taking the course, and to file reports showing such information with the Department of State.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal required by this rule has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule), the installer's warranty seal required by this section has been attached to such manufactured home, and the governmental agency or department or other person or entity responsible for issuing certificates of occupancy has independently determined that such manufactured home has been installed in accordance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code.

3. PROFESSIONAL SERVICES.

Small businesses are not likely to require professional services in order to comply with the reporting, record keeping and other requirements of this rule.

Local governments are not likely to require professional services in order to comply with the requirements of this rule.

4. COMPLIANCE COSTS.

Manufacturer's Warranty Seals. The cost of obtaining manufacturer's warranty seals will be \$125 per seal. A manufacturer will be permitted to charge up to \$150 for attaching each seal.

Installer's Warranty Seals. The cost of obtaining an installer's warranty seal will be \$35 per seal (if fewer than 6 are requested at one time) or \$25 per seal (if 6 or more are requested at one time). An installer will be permitted to charge up to \$50 for attaching each seal.

Certification as a Manufacturer. The initial cost of obtaining certification as a manufacturer will be \$200 for certification for 2 years, plus the cost of the surety bond. The Department of State estimates that the premium for a \$50,000 bond will be approximately \$800 to \$1,200 for 2 years. Therefore, the Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between \$1,000 and \$1,400. However, in the case of an applicant who files a deposit account certificate, instead of a surety bond, the initial cost of obtaining certification as a manufacturer will be \$200 plus any costs associated with establishing and maintaining the deposit account evidenced by the deposit account certificate. Further, a person applying for a limited certificate as a manufacturer will be required to pay \$25 for certification for 2 years, and will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State estimates that the initial cost of obtaining a limited certificate as a manufacturer will be \$25.

A certified manufacturer will be required to renew such certification every 2 years, to renew the surety bond (if applicable) every 2 years, and to take 3 hours of continuing education courses every 2 years. The fee for renewing the certification will be \$200 for 2 years. The Department of State estimates that the renewal premium for the surety bond will be approximately \$800 to \$1,200 for 2 years. The Department of State estimates that the fee to be paid to the instructional provider for the required continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as a manufacturer will be between \$1,050 and \$1,450 every 2 years, or between \$525 and \$725 per year. However, in the case of a certified manufacturer who files a deposit account certificate, instead of a surety bond, the cost of maintaining certification will include the cost of renewing the certificate (\$200 for 2 years), plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$250 every 2 years, or \$125 per year, plus any costs associated with maintaining the deposit account evidenced by the deposit account certificate. Further, in the case of a person holding a limited certificate as a manufacturer, renewal fee will be \$25 for 2 years, and such person will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State

estimates that the cost of maintaining a limited certificate as a manufacturer will include the cost of renewing the certificate (\$25 for 2 years) plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$75 every 2 years, or \$37.50 per year.

Certification as a Retailer. The initial cost of obtaining certification as a retailer will be \$200 for certification for 2 years, plus the cost of the surety bond. The Department of State estimates that the premium for a \$25,000 bond will be approximately \$400 to \$600 for 2 years. Therefore, the Department of State estimates that the initial cost of obtaining certification as a retailer will be between \$600 and \$800. However, in the case of an applicant who files a deposit account certificate, instead of a surety bond, the initial cost of obtaining certification as a retailer will be \$200 plus any costs associated with establishing and maintaining the deposit account evidenced by the deposit account certificate. Further, a person applying for a limited certificate as a retailer will be required to pay \$25 for certification for 2 years, and will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State estimates that the initial cost of obtaining a limited certificate as a retailer will be \$25.

A certified retailer will be required to renew such certification every 2 years, to renew the surety bond (if applicable) every 2 years, and to take 3 hours of continuing education courses every 2 years. The fee for renewing the certification will be \$200 for 2 years. The Department of State estimates that the renewal premium for the surety bond will be approximately \$400 to \$600 for 2 years. The Department of State estimates that the fee to be paid to the instructional provider for the required continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as a retailer will be between \$650 and \$850 every 2 years, or between \$325 and \$425 per year. However, in the case of a certified retailer who files a deposit account certificate, instead of a surety bond, the cost of maintaining certification will include the cost of renewing the certificate (\$200 for 2 years), plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$250 every 2 years, or \$125 per year, plus any costs associated with maintaining the deposit account evidenced by the deposit account certificate. Further, in the case of a person holding a limited certificate as a retailer, renewal fee will be \$25 for 2 years, and such person will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State estimates that the cost of maintaining a limited certificate as a retailer will include the cost of renewing the certificate (\$25 for 2 years) plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$75 every 2 years, or \$37.50 per year.

Certification as an Installer. The initial cost of obtaining certification as an installer will be \$200 for certification for 2 years, plus the cost of the surety bond, plus the cost of the required initial training. The Department of State estimates that the premium for a \$10,000 bond will be approximately \$200 for 2 years, and the Department of State estimates that the fee to be paid to the instructional provider for the required initial training courses will be between \$200 and \$300. Therefore, the Department of State estimates that the initial cost of obtaining certification as an installer will be between \$600 and \$700. However, in the case of an applicant who files a deposit account certificate, instead of a surety bond, the initial cost of obtaining certification as an installer will be \$200, plus the cost of obtaining the required initial training (estimated at \$200 to \$300), for a total of \$400 to \$500, plus any costs associated with establishing and maintaining the deposit account evidenced by the deposit account certificate. Further, a person applying for a limited certificate as an installer will be required to pay \$25 for certification for 2 years, and will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State estimates that the initial cost of obtaining a limited certificate as an installer will include the certification fee (\$25) plus the cost of obtaining the required initial training (estimated at \$200 to \$300), for a total of \$225 to \$325.

A certified installer will be required to renew such certification every 2 years, to renew the surety bond (if applicable) every 2 years, and to take 3 hours of continuing education courses every 2 years. The fee for renewing the certification will be \$200 for 2 years. The Department of State estimates that the renewal premium for the surety bond will be approximately \$200 for 2 years. The Department of State estimates that the fee to be paid to the instructional provider for the required continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as an installer will be \$450 every 2 years, or \$225 per year. However, in the case of a certified installer who files a deposit account certificate, instead of a surety bond, the cost of

maintaining certification will include the cost of renewing the certificate (\$200 for 2 years), plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$250 every 2 years, or \$125 per year, plus any costs associated with maintaining the deposit account evidenced by the deposit account certificate. Further, in the case of a person holding a limited certificate as an installer, renewal fee will be \$25 for 2 years, and such person will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State estimates that the cost of maintaining a limited certificate as an installer will include the cost of renewing the certificate (\$25 for 2 years) plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$75 every 2 years, or \$37.50 per year.

Certification as a Mechanic. The initial cost of obtaining certification as a mechanic will be \$100 for certification for 2 years, plus the cost of the surety bond, plus the cost of the required initial training. The Department of State estimates that the premium for a \$5,000 bond will be approximately \$200 for 2 years, and the Department of State estimates that the fee to be paid to the instructional provider for the required initial training courses will be between \$100 and \$125. Therefore, the Department of State estimates that the initial cost of obtaining certification as a mechanic will be between \$400 and \$425. However, in the case of an applicant who files a deposit account certificate, instead of a surety bond, the initial cost of obtaining certification as a mechanic will be \$100, plus the cost of obtaining the required initial training (estimated at \$100 to \$125), for a total of \$200 to \$225, plus any costs associated with establishing and maintaining the deposit account evidenced by the deposit account certificate. Further, a person applying for a limited certificate as a mechanic will be required to pay \$25 for certification for 2 years, and will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State estimates that the initial cost of obtaining a limited certificate as a mechanic will include the certification fee (\$25) plus the cost of obtaining the required initial training (estimated at \$100 to \$125), for a total of \$125 to \$150.

A certified mechanic will be required to renew such certification every 2 years, to renew the surety bond (if applicable) every 2 years, and to take 3 hours of continuing education courses every 2 years. The fee for renewing the certification will be \$100 for 2 years. The Department of State estimates that the renewal premium for the surety bond will be approximately \$200 for 2 years. The Department of State estimates that the fee to be paid to the instructional provider for the required continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as a mechanic will be \$350 every 2 years, or \$175 per year. However, in the case of a certified mechanic who files a deposit account certificate, instead of a surety bond, the cost of maintaining certification will include the cost of renewing the certificate (\$100 for 2 years), plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$150 every 2 years, or \$75 per year, plus any costs associated with maintaining the deposit account evidenced by the deposit account certificate. Further, in the case of a person holding a limited certificate as a mechanic, renewal fee will be \$25 for 2 years, and such person will not be required to file his or her own surety bond or deposit account certificate. Therefore, the Department of State estimates that the cost of maintaining a limited certificate as a mechanic will include the cost of renewing the certificate (\$25 for 2 years) plus the cost of the required continuing education courses (estimated to be \$50), for a total of \$75 every 2 years, or \$37.50 per year.

The foregoing compliance costs are not likely to vary significantly by reason of the size of the business. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the premium for a surety bond may be dependent, in part, on the size of the business for which the bond is issued.

Local governments are not likely to incur any costs in complying with this rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State will print the warranty seals required by this rule. The Department of State intends to prepare the application forms that will be required by this rule, and to post such forms on the Department's web page and otherwise make such forms freely available to the regulated parties. The Department of State believes that it will be economically and technologically feasible for small businesses to comply with this rule.

6. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the size of the businesses involved

in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for small businesses than for it will be for larger businesses. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries.

The Department of State will contact local code enforcement officials to inform them of Article 21-B and this rule, and the impact of Article 21-B and this rule on the installation of manufactured homes in this State.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements Article 21-B of the Executive Law. Both Article 21-B and this rule apply uniformly throughout the State, including all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The reporting, recordkeeping and other compliance requirements of this rule are described in paragraph 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Professional services are not likely to be required in rural areas in order to comply with such requirements.

3. COSTS.

An estimate of the initial capital costs and an estimate of the annual cost of complying with this rule are set forth in paragraph 4 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Such costs are not likely to vary significantly for different types of public and private entities in rural areas. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the premium for a surety bond may be dependent, in part, on the location of the business for which the bond is issued.

4. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the location of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for regulated parties located in rural areas than for it will be for regulated parties located in suburban or metropolitan areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries, including representatives of those industries located in rural areas.

The Department of State will contact local code enforcement officials, including local code enforcement officials located in rural areas, to inform them of Article 21-B and this rule, and the impact of Article 21-B and this rule on the installation of manufactured homes in this State.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule establishes the procedures for obtaining and attaching the manufacturer's warranty seal and installer's warranty seal required by Article 21-B of the Executive Law, the fees to be paid by the manufacturer and installer to obtain the warranty seals, and the maximum fees that may be charged to the customer for attaching the warranty seals to the manufactured home. The maximum fee that may be charged to a customer for attaching the required seals will be \$200. The typical delivered and installed cost of a manufactured home in this State is approximately \$70,000. Therefore, the cost of the warranty seals will be less than 0.3% of the cost of a home, and the statutory requirement that warranty seals be attached, as implemented by this rule, should not have a substantial impact on the market for manufactured homes or on jobs or employment opportunities in the manufactured home industry.

This rule also establishes procedures for determination of certain disputes regarding manufactured homes by the Department of State. Article 21-B directs the Department of State to establish such procedures. It is

anticipated that by providing for administrative determination of disputes, this rule will reduce the litigation expenses for all parties involved in such disputes. Therefore, the statutory requirement that the Department of State provided for administrative resolution of disputes, as implemented by this rule, should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

This rule also established the qualifications for obtaining certification as a manufacturer, retailer, installer, or mechanic of manufactured homes. A person or business entity applying for certification will incur the following costs:

(1) Generally, the cost of obtaining a certification will be \$100 per year in the case of a manufacturer, retailer, and installer, and \$50 per year in the case of a mechanic. However, a person who is employed by a person who or a business entity which is certified may apply for a limited certification, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer; the cost of obtaining such a limited certificate will be \$12.50 per year.

(2) Installers and mechanics may be required to pay fees to the instructional providers who present the initial training courses required for certification, and all certificate holders may be required to pay fees to the instructional providers who present the continuing education courses required to maintain certified status.

(3) Generally, each certificate holder will be required to file a surety bond or a deposit account certificate, and those certificate holders who file a surety bond will be required to pay premiums to the insurance companies that issue such bonds. However, the holder of a limited certificate will not be required to file a surety bond or a deposit account certificate, provided that his or her certified employer has filed an acceptable surety bond or deposit account certificate.

It is anticipated that the total cost of certification, instruction, and bonding will be relatively modest, particularly when these costs are spread over all the units manufactured by a certified manufacturer, sold by a certified retailer, installed by a certified installer, or serviced by a certified mechanic, during the course of a year. Therefore, the statutorily mandated certification process, as implemented by this rule, should not add a significant sum to the total cost of a manufactured home in this State, and should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

NOTICE OF ADOPTION

Guidance Documents

I.D. No. DOS-13-05-00009-A

Filing No. 365

Filing date: March 27, 2006

Effective date: April 12, 2006

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

Action taken: Addition of Part 265 and Appendix 1 to Title 19 NYCRR.

Statutory authority: State Administrative Procedure Act, section 202-e

Subject: Guidance documents.

Purpose: To implement the provisions of State Administrative Procedure Act, section 202-e concerning guidance documents.

Text of final rule: Part 265 is added to Title 19 NYCRR to read as follows:

GUIDANCE DOCUMENTS

265.1 (a) *Definition.* A guidance document means any guideline, memorandum or similar document prepared by an agency that provides general information or guidance to assist regulated parties in complying with any statute, rule or other legal requirement, but shall not include documents that concern only the internal management of the agency.

(b) *Publication requirements.* Not less than once each year, every agency shall submit to the Secretary of State for publication in the State Register a list of all guidance documents on which the agency currently relies, and provide information on where and how regulated parties and members of the public may inspect and obtain copies of any such document. This list shall be in a form as near as practical to the model Guidance Document Certification by Agency Head form contained in Appendix 1 of this Title. Unless otherwise provided for by law, an agency may make such guidance documents available as provided in the Freedom of Information Law, and may charge fees pursuant to such law for copies of any such document.

(c) *Exemptions.* (1) The Secretary of State may exempt an agency from compliance with the requirements of subdivision (b) of this section

upon a determination that the agency has published on its website the full text of all guidance documents on which it currently relies. The Secretary of State shall publish a notice of such determination identifying the website in the State Register.

(2) An agency head may seek a one year exemption from guidance document publication requirements by certifying to the Secretary of State that the full text of all guidance documents on which the agency currently relies are located on the agency's website and identifying the web site location where these guidance documents are located. This request shall be in a form as near as practical to the model Guidance Document Certification by Agency Head form contained in Appendix 1 of this Title. An agency which does not currently rely on any guidance document may seek a one year exemption from guidance document publication requirements by certifying to the Secretary of State on the model Guidance Document Certification by Agency Head form that it does not currently rely on any guidance document. The Secretary of State will publish a notice to this effect in the State Register.

(d) Five year review of guidance documents. Not less than once every five years, every agency shall conduct a process for reviewing and updating all guidance documents on which it currently relies. In conducting such process, the agency shall obtain feedback from regulated parties and members of the public who are directly or indirectly affected by the guidelines.

See Appendix in this issue for Guidance Document format.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 265.1(c)(2) and Appendix 1.

Text of rule and any required statements and analyses may be obtained from: Deborah Ritzko, Director, Division of Administrative Rules, Department of State, 41 State St., Albany, NY 12231, (518) 474-6957, e-mail: dritzko@dos.state.ny.us

Job Impact Statement

The purpose of the rule is to implement the provisions of State Administrative Procedure Act (SAPA) § 202-e concerning Guidance Documents. In particular, the rule provides guidance to state agencies concerning exemption from the requirement found in SAPA § 202-e(1) that each agency submit to the Secretary of State for publication in the State Register a list of all guidance documents on which the agency currently relies. The nonsubstantive changes made in the text of the rule found in this Notice of Adoption compared to the text of the rule proposed in the Notice of Proposed Rule Making will not impose a substantial impact on jobs and employment opportunities. It is evident from the subject matter of the rule that it will have no impact on jobs and employment opportunities.

Assessment of Public Comment

The Department of State received three comments concerning the proposed rule. Two of these comments resulted in nonsubstantive changes to the rule.

COMMENT: In a letter to the Department of State, Assemblyman Ruben Diaz, Jr., the Assembly sponsor of the bill which became Chapter 730 of the Laws of 2005 containing guidance document requirements, welcomed "the Department of State's efforts to assist agencies in informing the public about the guidance documents they issue." Assemblyman Diaz suggested one change to the form entitled "Guidance Documents Certification by Agency Head" which the Department appended to the proposed rule. Assemblyman Diaz suggested that when an agency certifies that it does not currently rely on any guidance documents, the Department publish a notice to this effect in the *State Register*.

RESPONSE: Section 261.1(c)(2) of the proposed rule has been amended to add the requirement that the Department of State publish a notice in the State Register when an agency certifies that it does not currently rely on any guidance documents.

COMMENT: The Department of Economic Development raised the question whether State Administrative Procedure Act (SAPA) section 202-e (Chapter 730 of the Laws of 2005) requires a state agency to include information and guidance which it provides to other state agencies as a part of its guidance documents list.

RESPONSE: The language of SAPA section 202-e(1) provides that state agencies must provide information on where and how regulated parties and members of the public may inspect and obtain copies of guidance documents. This indicates that the purpose of section 202-e is to provide a process whereby non-governmental entities may obtain direction as to how they may comply with government directives. Although the terms "regulated parties" and "members of the public" are not specifically defined in SAPA, the context of various other SAPA requirements strongly implies that state agencies are not included within these terms (see e.g., SAPA section 202-a concerning requirements for regulatory impact state-

ments). A logical construction of SAPA section 202-e is that it applies to guidance provided to regulated parties (e.g., business enterprises) and members of the public (e.g. individual citizens) but not to guidance provided by one state agency to another state agency.

COMMENT: The Office of Temporary and Disability Assistance posed two questions: (1) When is the last day on which an agency may submit a list of guidance documents to the Department of State in order to comply with the provisions of Chapter 730 of the Law of 2005? (2) Will the Department of State accept a list of guidance documents on which an agency currently relies if the "Guidance Documents Certification by Agency Head" form does not accompany the list and the name of a contact person is identified in the list?

RESPONSE: (1) Chapter 730 of the Laws of 2004 concerning guidance documents was signed by Governor Pataki on December 8, 2004 and was effective on March 8, 2005. However, Chapter 253 of the Laws of 2005 amended the effective date of Chapter 730 to be 180 rather than 90 days after it became a law. This changed the effective date of Chapter 730 to June 6, 2005. Each state agency, therefore, has until June 5, 2006 to comply with the requirements of SAPA section 202-e. (2) The Department of State will accept a list of an agency's guidance documents unaccompanied by the "Guidance Documents Certification by Agency Head" form. The Secretary of State's authority to exempt an agency from complying with the requirement that the agency submit a list of its guidance documents for publication in the State Register only applies if the agency publishes the full text of all guidance documents on which it currently relies on its website. When an agency provides a list of all guidance documents on which it currently relies to the Secretary of State for publication in the State Register pursuant to SAPA section 202-e(1), certification by the head of the agency is not required in order for the agency to comply with SAPA section 202-e(1) and for the Secretary of State to perform the exemption function permitted by SAPA section 202-e(2). The "Guidance Documents Certification by Agency Head" form has been modified to delete the requirement that an agency head certify the list of guidance documents submitted for publication in the State Register under SAPA section 202-e(1).

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Enforcement of Support Obligations and Issuance of Income Executions

I.D. No. TDA-36-05-00003-A

Filing No. 372

Filing date: March 28, 2006

Effective date: April 14, 2006

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

Action taken: Amendment of section 347.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 111-a

Subject: Enforcement of support obligations and issuance of income executions.

Purpose: To implement State and Federal laws concerning the process for issuing income execution orders in child support cases and to change the method for calculating the amount of any additional deductions to be withheld from an employee's income if the employee owes child support arrears or past due child support.

Text of final rule: Section 347.9 is amended to read as follows:

§ 347.9 Enforcement of support obligations and issuance of income executions.

(a) Immediate issuance of income executions. For any child support or child and spousal support court order issued under the provisions of [article 3-A or] section 236 or 240 of the Domestic Relations Law, or article 4, 5, [or] 5-A or 5-B of the Family Court Act, which directs payments to the

Support Collection Unit (SCU), the local child support enforcement unit through its SCU, must:

(1) immediately issue and process an income execution for support enforcement *within 15 calendar days of the date the support order is received if the employer's address is known or, if unknown, within 2 business days of the date the Child Support Management System (CSMS) receives notice of the income source from the State New Hire Directory or other source*, unless:

(i) the court finds and sets forth in writing the reasons that there is good cause not to require immediate income withholding. For purposes of this paragraph, good cause means substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income execution does not constitute good cause; or

(ii) when the child is not in receipt of public assistance, a written agreement providing for an alternative arrangement has been executed by the parties. A written agreement may include an oral stipulation made on the record in court which results in a written order.

(2) issue and process an income execution as follows:

(i) use the income execution form developed by the State [Office] Division of Child Support Enforcement ([O] D CSE) and provided to the district through the [Child Support Management System (CSMS)] CSMS;

(ii) serve the income execution upon the debtor's employer or income payor, and provide a copy of the income execution to the debtor. Service must be by regular mail or in the same manner as a summons may be served; the debtor's copy may be mailed to the debtor's last known residence or such other place where the debtor is likely to receive notice;

(iii) correct any error made in the issuance of an income execution which is to the detriment of the debtor, within 30 days after notification by the debtor of such error; and

(iv) include the following information on the income execution form:

(a) the caption of the order of support;

(b) the date that the order of support was entered;

(c) the court in which the order of support was entered;

(d) the amount of the periodic payments specified in the order

of support;

(e) the total amount of any arrears;

(f) the names of the debtor and creditor;

(g) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(h) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;

(i) the amount, determined in accordance with subdivision (e) of this section, of any additional deduction to be made from the debtor's income, to satisfy any accrued arrears/past due support;

(j) a statement that:

(1) the deductions will apply to current and future income;

(2) the income execution will be served upon any current or subsequent employer or income payor; [and]

(3) the income execution is binding until further notice; *and*

(4) *the procedures available for claiming that the support collection unit made an error in issuing the income execution.*

(k) a statement that:

(1) no employer is permitted to discharge, lay off or discipline an employee or refuse to hire a prospective employee because one or more wage assignments or income executions have been served upon such employer or a former employer against the employee's or prospective employee's wages, and that a violation of this provision is punishable as a contempt of court by fine or imprisonment or both;

(2) each payment remitted by an employer or income payor must include, in addition to the [identity] *name* and social security number of the debtor *and the debtor's CSMS account number*, the date and amount of each withholding of the debtor's income included in the payment. Date of withholding means the date on which the income would otherwise have been paid or made available to the debtor if it were not withheld by the employer or income payor.

(3) an employer or income payor served with an income execution is required to commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs 14 days after service of the execution, and is required to remit payments to the creditor within [10] *7 business* days of the date that the debtor is paid;

(4) an employer or income payor is liable to the creditor for failure to deduct the amounts specified; provided, however, that deduction of the amounts specified by the employer or income payor does not relieve the debtor of the underlying obligation of support;

(5) if the employer or income payor fails to pay the creditor, the creditor *or the debtor* may commence a proceeding against such person for accrued deductions, together with interest and reasonable attorney's fees;

(6) if the money due to the debtor consists of salary or wages and the debtor's employment is terminated by resignation or dismissal at any time after service of the execution, the levy will thereafter be ineffective and the execution will be returned, unless the debtor is reinstated or reemployed within 90 days after such termination;

(7) an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last known home address and the name and address of the new employer, if known; [and]

(8) where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld are not permitted to exceed the following:

(i) where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld may not exceed 50 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld (hereinafter referred to as disposable earnings), except that if any part of such deduction is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 55 percent of disposable earnings;

(ii) where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deduction to be withheld may not exceed 60 percent of the disposable earnings, except that if any part of such deductions is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 65 percent of disposable earnings [.] ;

(9) *upon a finding by the family court that the employer or income payor failed to deduct or remit deductions as specified in the income execution, the court shall issue to the employer or income payor an order directing compliance and may direct the payment of a civil penalty not to exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor noncompliance; and*

(10) *when an employer or income payor receives an income withholding issued by another state, the employer or income payor shall apply the income withholding law of the state of the debtor's principal place of employment in determining:*

(i) *the employer's fee, if any, for processing income withholding;*

(ii) *the maximum amount permitted to be withheld from the debtor's income;*

(iii) *the time periods within which the employer must implement the income withholding and forward the child support payments to the other state;*

(iv) *the priorities for withholding and allocating income withheld for multiple child support creditors; and*

(v) *any withholding terms or conditions not specified in the withholding instrument.*

(b) Issuance of income executions upon default. For any child support or child and spousal support court order issued prior to November 1, 1990, the local child support enforcement unit, through its support collection unit (SCU), must maintain an effective system for identifying those debtors who become delinquent in meeting their court-ordered support obligation(s). The following action must be taken against those respondents who have been identified as being delinquent:

(1) For those debtors who have failed to pay up to two required weekly court-ordered support payments or one biweekly court-ordered support payment, districts should attempt to obtain voluntary resumption of support payments.

(2) For those debtors who have failed to remit three payments when due in the full amount directed by an order of support, or if the accumulation of arrears is equal to or greater than the amount directed to be paid for one month, local district SCUs must issue and process an income execution as follows:

(i) Use the income execution form developed by [O] DCSE and provided through CSMS.

(ii) Serve a copy of the income execution upon the debtor, by regular mail or in the same manner as a summons may be served, at the debtor's last known residence or such other place where the debtor is likely to receive notice.

(iii) If a mistake of fact is alleged by the debtor, determine the validity of such claim and provide written notice of such determination within 45 days after notice to the debtor of the intent to serve the income execution on the employer or income payor. If the mistake of fact is disallowed, the written notice must state that the income execution will be served on the employer or income payor, and the time that deductions will begin.

(iv) If no mistake of fact is alleged by the debtor, or if a determination if made by the SCU that the alleged mistake of fact is not valid, proceed with the expeditious implementation of the income execution by serving the income execution upon the debtor's employer or income payor.

(v) Include the following information on the income execution form:

- (a) the caption of the order of support;
- (b) the date that the order of support was entered;
- (c) the court in which the order of support was entered;
- (d) the amount of the periodic payments specified in the order of support;

(e) the total amount of the arrears that gave rise to the implementation of the income execution;

- (f) the nature of the default;
- (g) the names of the debtor and creditor;

(h) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(i) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;

(j) the amount, determined in accordance with subdivision (e) of this section, of the additional deduction to be made from the debtor's income, that is to be applied to the reduction of the arrears/past due support that gave rise to the income execution;

(k) a statement of the manner in which a mistake of fact may be asserted;

- (l) a statement that:
 - (1) the deductions will apply to current and future income;
 - (2) the income execution will be served upon any current or subsequent employer or income payor, unless a mistake of fact is asserted within 15 days; and

(3) if the debtor claims a mistake of fact, a determination of the validity of such claim will be made within 45 days after notice to the debtor is provided and the debtor will receive written notice of:

- (i) whether or not the income execution will be served; and
- (ii) the date when deductions will begin;

- (4) the income execution is binding until further notice;

(m) and the statements set forth in clause (k) of subparagraph (a)(2)(iv) of this section.

(3) With regard to debtors who have defaulted on their court-ordered support obligations and who are unemployed, social services districts should proceed as follows:

(i) If the amount in default is not sufficient for the implementation of an income execution, an attempt should be made to obtain a written voluntary agreement to support, whereby the Department of Labor would be authorized to withhold the amount agreed upon from the debtor's unemployment insurance benefits and remit such amount to the SCU[:]; *or*

(ii) If the amount in default is sufficient for the implementation of an income execution, action should be taken as set forth in paragraph (2) of this subdivision.

(c) In cases in which attempts to enforce a support order have been unsuccessful, the child support enforcement unit, at the time such attempts fail, must examine the reasons for the failure and determine when, in the future, it would be appropriate to take enforcement actions and, at that time, take such actions.

(d) Additional Enforcement Action. The child support enforcement unit, in addition to following the procedures set forth in subdivisions (a) and (b) of this section, must employ all appropriate statutory support enforcement remedies, within 30 calendar days of identifying a failure to comply with the support provisions of the order, or of locating the absent parent, whichever occurs later. If service of process is necessary prior to initiating an enforcement action, such service must be completed and enforcement action taken or the child support enforcement unit must document on CSMS unsuccessful diligent efforts to serve process, as defined in section 347.7 of this Part, no later than 60 calendar days after identifying a failure to comply with the support provisions of the order or of locating the absent parent, whichever occurs later.

(e) Calculation of the amount of additional deduction for income execution. (1) When an income execution is issued under subdivision (a) or (b) of this section for a debtor who owes arrears/past due support, the SCU must set the amount of the additional deduction to be made from the debtor's income. Such deduction must be in addition to the amount withheld to ensure compliance with the support obligation directed in the order of support. The amount of the additional deduction must be set as follows:

(i) [If the current support obligation is \$50 per month or less, the amount of the additional deduction must be one-half the amount of the support obligation at the same frequency as that of the support obligation.] *If the income from which deductions are to be made represents wage, salary, commission, draws on commissions, pension, or retirement income, or other periodic payments, including but not limited to workers' compensation, disability, social security, or unemployment insurance benefits income, the amount of the additional deduction shall be one-half (50%) of the amount of the current support obligations, at the same frequency as the current support obligation. Where a current support obligation no longer exists the additional amount shall be one and one-half (150%) of the amount of the most recent current support obligation greater than zero, at the same frequency as the most recent support obligation. Where no current support obligation ever existed for current support but support arrears were established by the court, the additional amount shall be the amount of the arrears divided by 12, payable in monthly installments.*

(ii) [If the support obligation is greater than \$50 per month, the amount of the additional deduction must be \$50 per week or one-half the support obligation at the same frequency as the support obligation, whichever is greater.] *If the income is from a source not identified in subparagraph (i) of this paragraph including, but not limited to, lump sum payments of bonuses, interest, dividends, workers' compensation, disability, Social Security, or unemployment insurance benefits income, the amount of the additional deduction shall be the total amount of arrears/past due support. Provided, however, that two or more periodic payments of workers' compensation, disability, Social Security, or unemployment insurance benefits income disbursed to a debtor as a single payment shall not be considered a lump sum payment, but shall be treated as separate periodic payments, each subject to deduction pursuant to subparagraph (i) of this paragraph.*

(iii) Where no support obligation exists for current support, the amount of the additional deduction is \$50 per week.

(iv) Where an income execution is issued to the Department of Labor for deduction from the debtor's unemployment insurance benefits, the amount of the additional deduction is \$10 per week.

(v) Notwithstanding the above subparagraphs, the imposition of the additional deduction cannot cause the total amount to be withheld from the debtor's income to exceed 40 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable income"). To the extent that the additional deduction would otherwise cause the total amount withheld to exceed 40 percent of the debtor's disposable income, the amount of the additional deduction must be adjusted so as to ensure that the amount withheld does not exceed 40 percent of the debtor's disposable income.]

(2) [The amount of the additional deduction for an income execution must be eliminated by the SCU upon satisfaction of the arrears/past due support. In addition, where] *Where the debtor provides documentary proof to the SCU that the imposition of the additional amount [SCU determined that the additional deduction] would reduce the debtor's remaining income below the self-support reserve, the SCU must eliminate or [modify] reduce the amount of the additional deduction as appropriate to ensure that the debtor's remaining income does not fall below the self support reserve. [When the debtor's remaining income would no longer be less than the self-support reserve, the amount of the additional deduction must be set in accordance with paragraph (1) of this subdivision. Social services districts must maintain on CSMS appropriate documentation of any action to eliminate or modify the amount of the additional deduction] Thereafter, the SCU must increase the amount of the additional deduction to the amount calculated pursuant to paragraph (1) of this subdivision at such time as its application would no longer reduce the debtor's remaining income below the self-support reserve.*

(3) *Where the debtor provides documentary proof to the SCU that the debtor has physical custody of the children who are the subjects of the support order, and a current support obligation no longer exists, the SCU may modify the amount of the additional deduction after taking into account the debtor's income and ability to support such children.*

(4) *The amount of the additional deduction for an income execution must be eliminated by the SCU upon satisfaction of the arrears/past due support.*

(5) *The SCU must maintain on CSMS a record of any action to eliminate or modify the amount of the additional deduction.*

(f) Issuance of income executions upon request. Upon request of the debtor, the SCU must issue an income execution pursuant to subdivision (a) of this section. Upon receipt of a written revocation of the debtor's request for an income execution, the SCU must notify the employer or income payor that the income execution is no longer effective and that it must be returned to the SCU.

Final rule as compared with last published rule: Nonsubstantive changes were made in section: 347.9(a)(1), (2)(iv)(i), (j)(4), (k)(3), (7), (9), (e)(1)(i) and (3).

Text of rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@OTDA.state.ny.us

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

Although changes were made to the proposed amendments, the changes do not require that the regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis or job impact statement be revised because the changes were purely technical and/or restored existing regulatory language.

Assessment of Public Comment

During the public comment period for the regulations concerning the enforcement of support obligations and issuance of income executions, the Office received comments from five commentators.

Comment: Two commentators objected to the proposed amendment that sets forth how the additional amounts of the income execution are to be calculated where there has never been a current support obligation but support arrears were established by the court (the amount is the amount of the arrears divisible by 12 months). They recommended that the time for repayment be extended beyond 12 months if arrears are over a certain amount. One commentator suggested that the non-custodial parent should be required to return to family court to seek a lower rate of payment.

Response: We believe there is sufficient flexibility in the proposed amendments to permit adjustments to additional amounts including, but not limited to, reducing or eliminating the additional amount if income would fall below the self support reserve because of such amount. See proposed 18 NYCRR 347.9(e)(2). We do not agree that the regulation should suggest that the obligor seek relief from family court in the form of a lower payment schedule. The authority rests with the agency to administer the income executions, including the additional amount. Challenges to an agency determination of the additional amount under this subdivision should be made pursuant to Article 78 of the Civil Practice Law and Rules.

Comment: One commentator stated that the provision permitting a reduction in the additional amount after taking into account the debtor's income and ability to support the children when the debtor has custody of the children for whom support is owed is too general a guideline for district's use.

Response: We believe that the debtor taking custody of the children for whom support is owed bears special consideration with regard to repayment of support amounts due and owing for such children. We believe that the factors proposed *i.e.*, taking into account the debtor's income and the debtor's ability to support his or her children provide a sufficient guideline and flexibility for districts to arrive at appropriate repayment amounts.

Comment: One commentator asked if the custody provision concerning the adjustment to the amount of additional deductions pertained to the debtor's children for whom the support is owed or for any child for whom the debtor has custody.

Response: The proposed amendment pertains to the children of the debtor for whom the support is owed. We agree that the amendment should provide that it only refers to the children who are the subjects of the order of support, and have made a clarifying change to 18 NYCRR 347.9(e)(3).

Comment: Two commentators cite an inconsistency between the proposed regulation and a New York statute regarding the definition of good cause in the context of issuing an immediate income execution.

Response: The proposed language has been removed. The proposed amendment further conformed the regulations of the Office of Temporary and Disability Assistance to federal regulation (45 CFR 303.100(b)(2)) by restating existing federal requirements that must be met in making good cause determinations to not require immediate income withholding. We

will give further consideration to proposing legislation to include such provisions in State law.

Comment: One commentator expressed concern that the proposed regulation was an unconstitutional violation of the separation of powers clause in that it appeared that a State executive branch agency was imposing requirements on the judicial branch of State government.

Response: The proposed language has been removed. See prior response.

Comment: One commentator expressed concern that the proposed amendment to 18 NYCRR 347.9(a)(2)(iv)(j)(4) seems to make all income executions subject to the mistake of fact process by including a statement with regard to mistake of fact in the income execution form.

Response: We agree with the commentator that an immediate income execution cannot be forestalled by a claim of mistake of fact. However, the debtor is entitled to notify the Support Collection Unit (SCU) of any error in the income execution that is to his or her detriment. The SCU has 30 days to correct the error. The regulation has been amended to reflect the correct terminology for the notice.

Comment: One commentator states that the proposed regulation in 18 NYCRR 347.9(a)(2)(iv)(k)(7) would require an employer to notify the issuing agency of the reason(s) for a debtor's separation from service while current law imposes no such requirement. Further the commentator questions what use the information would serve.

Response: We agree with the commentator and the language has been deleted from 18 NYCRR 347.9(a)(2)(iv)(k)(7).

Comment: One commentator suggests that the language pertaining to an employer fine for noncompliance with income withholding should be changed to reference a civil penalty to be consistent with State law. The commentator also notes parenthetically that the regulations still do not address to whom such a civil penalty should be paid.

Response: We agree with the commentator's suggested language change and have included it in 18 NYCRR 347.9(a)(2)(iv)(k)(9). We also agree with the observation about the need for direction from the courts with respect to whom the civil penalty should be paid. This Office is considering a statutory change to require such penalties to be payable to the creditor.

Comment: One commentator states that the definition of income in the proposed regulation does not mirror that which is defined in State law. The commentator also suggests that the additional amount specified for withholding from unemployment insurance benefits in the existing regulation should remain in place.

Response: The commentator is correct that income, as defined in this proposed section, does not mirror the State law that lists examples of income subject to income withholding. We believe the statute defining income sets forth what may be included but is not intended to be exhaustive. That said, the proposed regulation does not add types of income but clarifies for agencies and income payors how to treat different types of income payouts *e.g.*, periodic vs. lump sum payments. Experience has demonstrated that much confusion is engendered in circumstances where the income to be paid is not periodic, necessitating communication between income payors and agencies to figure out what may be withheld. The proposed regulation and subsequent modifications to the income execution forms will make these distinctions clear. The commentator is correct that a principle aim of the proposed regulations is to establish uniformity in applying the additional amount to all types of income, including unemployment insurance benefits. We believe that the protections provided by the proposed regulation are adequate for any debtor to seek relief with the support collection unit from the calculated additional amount.

Comment: One commentator expressed concern that the proposed requirement to issue and process an income execution within a specified timeframe (15 calendar days from the date the order is received) is onerous and will not be possible given the high volume of orders received by the district.

Response: The proposed regulation conforms State regulations to federal regulation at 45 CFR 303.100(e)(2). Assistance may be provided by the Office of Temporary and Disability Assistance to review local district business processes and provide technical assistance to assist the districts in meeting this requirement.