

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Golden Nematode Quarantine

I.D. No. AAM-45-05-00006-A
Filing No. 253
Filing date: Feb. 28, 2006
Effective date: March 15, 2006

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

Action taken: Amendment of section 127.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Host materials (potatoes, tomatoes and eggplants) and soil.

Purpose: To modify the golden nematode quarantine to prevent the further spread of this pest by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field currently owned or operated by Hoeffner Farms in the Town of Fremont in Steuben County.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-45-05-00006-P, Issue of November 9, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Robert Mungari, Director, Division of Plant Industry,

Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

Assessment of Public Comment

No comment.

Banking Department

EMERGENCY RULE MAKING

Community Reinvestment Act Requirements

I.D. No. BNK-11-06-00002-E
Filing No. 241
Filing date: Feb. 24, 2006
Effective date: Feb. 27, 2006

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

Action taken: Amendment of Part 76 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 10, 14(1) and 28-b

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

Specific reasons underlying the finding of necessity: The purpose of the Community Reinvestment Act ("CRA") is to encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate income neighborhoods, consistent with safe and sound operations. Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations and is examined by State and federal regulators with respect to CRA.

Effective September 1, 2005, State chartered banks will have to comply with the amended federal CRA regulations recently adopted jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

When Part 76 was first adopted, and for the subsequent amendments made thereto, the State CRA regulation was designed to create compatibility with the federal CRA regulations so that banks chartered under the New York Banking Law would not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden. Consequently, the recently adopted CRA federal amendments which become effective September 1, 2005, necessitate the emergency adoption of the amendments to Part 76 of the General Regulations of the Banking Board to make the State CRA regulations compatible with the federal CRA regulation.

Subject: Compliance with Community Reinvestment Act requirements.

Purpose: To encourage banking institutions to help meet the credit needs of their local communities, including low-and-moderate income neighborhoods, consistent with safe and sound operations.

Substance of emergency rule: Section 76.2(b) is amended to include references to "metropolitan divisions" in determining an area's median family income.

Section 76.2(f) is amended to revise the definition of "community development" to include activities that revitalize or stabilize disaster areas

and distressed or underserved middle-income nonmetropolitan geographies.

Section 76.2(q) is amended to add a definition of “metropolitan division”.

Sections 76.2(q) to 76.2(w) are renumbered to account for the added definition in Section 76.2(q), as noted above.

Section 76.2(t) is amended to raise the asset threshold for a “small banking institution” to \$1 billion, to introduce the new concept of an “intermediate small banking institution,” and to add provisions for adjusting the asset thresholds for small and intermediate small banking institutions.

Section 76.2(u) is amended to reflect the aforementioned renumbering, and to update references to the Banking Department’s address.

Section 76.2(v) is amended to reflect the aforementioned renumbering, to clarify a reference to Federal Reserve Regulation BB and to update references to the Banking Department’s address.

Section 76.5(a) is amended to replace the requirement for biennial CRA examinations with more flexible CRA examination scheduling criteria and to clarify the connection between the numerical ratings specified in Part 76 and the words commonly used to describe the rating.

Section 76.5(b) is amended to provide examples of laws, rules and regulations that, when violated, could lead to reduced CRA performance ratings.

Section 76.6(b) is amended to include references to metropolitan divisions.

Section 76.6(c)(1) is amended to include references to metropolitan divisions.

Section 76.8(a)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending as part of the institution’s CRA performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.8(b)(2) is amended to eliminate a reference to loan renewals.

Section 76.8(c)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending by an affiliate of the institution as part of the institution’s CRA performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.8(d) is amended to clarify that the loans being discussed in the Section are community development loans.

Section 76.8(d)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending by an affiliate of the institution as part of the institution’s CRA performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.10(d)(1) is amended to clarify the circumstances under which additional consideration will be given for branches located outside low- or moderate-income areas.

Section 76.10(d)(2) is amended to clarify the criteria for evaluating an institution’s record of opening new branches and closing existing branches.

Section 76.10(f) is amended to add a provision specifying that the Banking Department will look favorably upon an institution’s efforts to establish a Banking Development District.

Section 76.12(a)(1) is added to identify which performance criteria apply to small banking institutions that are not intermediate small banking institutions.

Section 76.12(a)(2) is added to identify the performance criteria that apply to intermediate small banking institutions.

Section 76.12(b) is added to delineate the Lending Test criteria that apply to all small banking institutions.

Section 76.12(c) is added to identify the Community Development Test performance criteria that apply only to intermediate small banking institutions.

Section 76.13(g)(1) is amended to correct an inaccurate cross-reference.

In addition, various technical amendments have been made to Part 76 to correct punctuation, renumber sub-paragraphs, and make similar minor adjustments.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire May 24, 2006.

Text of emergency 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

Regulatory Impact Statement

1. Statutory authority:

Banking Law Sections 10, 14(1) and 28-b authorize the Banking Board to promulgate rules and regulations effectuating the provisions of the Community Reinvestment Act (“CRA”).

2. Legislative objectives:

The purpose of CRA is to encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate income neighborhoods, consistent with safe and sound operations. The amendments to Part 76 make compatible the New York State CRA regulations to the changes made to the federal CRA regulations, recently adopted jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the “Federal Agencies”) that became effective on September 1, 2005. As a result, the amendments establish a CRA framework paralleling that in the federal CRA regulation, by which the State of New York Banking Department (“Banking Department”) can assess a banking institution’s record of helping to meet the credit needs of its local community.

3. Needs and benefits:

Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations. Thus, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. This rulemaking primarily involves amendments to Part 76 with respect to certain provisions of the State CRA regulation to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law do not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden.

Specifically, the rule includes amendments that reduce the regulatory burden imposed on banks with an asset size between \$250 million and \$1 billion, now referred to as “intermediate small banking institutions”, without regard to holding company affiliation, by exempting them from CRA loan data collection and reporting obligations. The intermediate small banking institutions will not be subject to the lending, investment, and service CRA performance tests. Instead, their CRA performance will be evaluated under the small bank lending test combined with a flexible new community development CRA performance test. This has the effect of reducing regulatory burden on institutions that fall within this category because they are relieved from their obligation to collect and report information about small business, small farm, and community development loans.

As mentioned above, the rule includes the implementation of a community development test for intermediate small banking institutions that provides a more appropriate framework for assessing community reinvestment performance by these banks. The number and amount of community development loans, the number of qualified investments, and the provision of community development services by an intermediate small banking institution, and the bank’s responsiveness through such activities to community development lending, investment, and service needs, are evaluated in the context of the individual bank’s capacities, business strategy, the bank’s assessment area(s), and the number and types of opportunities for community development activities.

The rule also revises the definition of “community development” to increase the number and kinds of tracts in which bank activities are eligible for community development consideration. Specifically, the category of community development with respect to activities that “revitalize or stabilize” is revised to provide that activities that revitalize or stabilize areas designated by the federal agencies as “distressed or underserved nonmetropolitan middle-income geographies” will qualify as community development activities. In addition, the rule extends the definition of “community development” to cover efforts made by banks to revitalize or stabilize designated disaster areas.

Further, the rule amends Part 76 to reflect certain technical changes to the regulation implementing the CRA to conform to changes made by the Office of Management and Budget (“OMB”) regarding the standards for defining Metropolitan Statistical Areas, and changes related to census tracts adopted by the U.S. Bureau of the Census (“Census”). OMB standards for defining statistical areas provide nationally consistent definitions to use when collecting, tabulating and publishing federal statistics by geographic area. The CRA regulation relies on OMB standards for defin-

ing metropolitan areas for purposes of CRA data collection and reporting and for delineating institutions' assessment areas.

The CRA definition of "geography" affects CRA assessment area delineation, data collection and reporting. The CRA regulation defined the term "geography" as a "census tract or a block-numbering area delineated by the United States Bureau of the Census in the most recent decennial census." Beginning with the 2000 Census, the Census only assigns tracts and no longer assigns block-numbering areas. Accordingly, the regulation amends the definition of geography to delete the term "block-numbering area".

Amendments to Part 76 also establish a CRA examination schedule for State chartered banks that will more closely align, to the extent feasible, the State CRA examination schedule with that of the bank's federal regulator, thereby eliminating, when possible, non-concurrent CRA examinations.

In addition, the rule includes certain amendments that clarify the existing CRA regulations to assist regulated entities whose CRA performance is being assessed. In particular, Part 76 is amended to clarify, by way of examples, actions that evidence discrimination, or evidence credit practices that violate an applicable law, rule, or regulation. Such evidence will adversely affect the evaluation of a bank's CRA performance.

Also included in the rule are clarifying amendments that: (a) describe the level of CRA performance associated with the CRA numerical performance ratings currently referred to throughout the regulation, (b) explain the criteria currently considered for evaluating a bank's CRA performance with respect to branch distribution, (c) specify the data referred to that must be maintained with respect to additional lending activity if banks elect to have additional lending activity considered in assessing their CRA performance, (d) make explicit the Banking Department's already existing practice to consider a bank's efforts to establish a Banking Development District in evaluating the bank's service test CRA performance criteria, and (e) state the Department's existing practice to apply the CRA performance criteria uniformly.

In addition to the foregoing, there are other small amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

4. Costs:

Costs to State Government: None

It is expected that there will not be an increase in the amount of examiner hours needed to conduct CRA examinations of State-chartered banks by amending the State's CRA regulations to create compatibility with the federal CRA regulations, and establishing a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator.

Costs to Local Government: None

Costs to the Regulated Entities

The Banking Department expects that because every New York State-chartered bank must comply with both the State and federal CRA laws and regulations, and the rule primarily seeks amendments to the State's CRA regulation to create compatibility with the federal CRA regulations, there will be no additional costs to the regulated entities due to the amendments to Part 76.

It is expected that the changes in Part 76, overall, will result in cost-savings to the regulated entities. Specifically, because the amendments to Part 76 primarily create compatibility with the federal CRA regulations, New York State-chartered banks that are subject to both the State and federal CRA laws and regulations will not incur the additional costs that would likely result if the regulated entities were required to satisfy two conflicting sets of CRA regulations. The estimated savings to the regulated entities in this regard can not be quantified by the Banking Department because there are a number of factors affecting a bank's CRA compliance costs, including the institution's asset size, the scope and type of its CRA programs, and the personnel involved in administering the programs and compliance with CRA.

Additionally, because the rule establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator, eliminating the regulatory burden of non-concurrent examinations, when possible, in this area will eliminate additional costs to the regulated entities for CRA examinations. The Banking Department is unable to estimate the savings to the regulated entities in this respect because the costs to an institution for an on-site CRA examination can vary greatly

according to the institution's asset size, the scope and type of its CRA programs, and the number of personnel needed to assist in connection with the examination.

5. Local government mandates:

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

6. Paperwork:

The rule will provide regulatory relief for State-chartered banks with an asset size between \$250 million and \$1 billion (intermediate small banking institutions) because it exempts these banks from CRA loan data collection and reporting obligations. As a result, such intermediate small banking institutions will be relieved of their obligation to collect and report information to the State and federal regulators about small business, small farm, and community development loans.

Additionally, since the rule establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator, a reduction in paperwork will result since the banks will have to produce the necessary paperwork only once per CRA evaluation period for concurrent examinations.

7. Duplication:

Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations. Consequently, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. The rule seeks amendments to Part 76 of the State CRA regulation to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law do not have to satisfy conflicting sets of CRA regulations.

8. Alternative approaches:

Proposal – New York State-chartered banks must comply with both the State and federal CRA laws and regulations. Therefore, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. As previously discussed in the Needs and Benefits section contained herein, the rule is necessary because it primarily amends Part 76 in various ways so that the State CRA regulation is compatible with the federal CRA regulation and establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator.

Due to the fact that State-chartered banks are required to comply with State and federal laws and regulations with respect to CRA, the Banking Department reasoned when Part 76 was first established, and during subsequent amendments thereto, that the State CRA regulation should be compatible with the federal CRA regulation. This approach to CRA has provided the regulated institutions with a consistent set of performance criteria with respect to their CRA activity. Accordingly, the rule contains amendments to Part 76 that will again provide a consistent approach to CRA compliance for the regulated entities so that they will not have to satisfy conflicting sets of CRA regulations. To the extent possible, it will also enable them to be examined concurrently by the State and federal regulator for CRA purposes, thereby eliminating the regulatory burden of non-concurrent CRA examinations. In the past, preventing regulated institutions from having to satisfy two different sets of CRA regulations has reduced their CRA regulatory burden. For that reason, it is expected that the current amendments will have a similar effect.

Do not propose the rule – If this alternative were considered, regulated entities would be faced with CRA compliance requirements under the State and federal regulations that would be substantially different. The regulated entities also would be required to submit to non-concurrent CRA examinations by the State and federal regulators. As explained in the Needs and Benefits section, this approach was not considered because the Banking Department believes that it is unnecessary to increase the regulatory burden placed on State-chartered banks by having them comply with conflicting sets of CRA regulations and subjecting them to non-concurrent CRA examinations.

9. Federal standards:

Federal CRA regulations recently adopted by the Federal Agencies become effective on September 1, 2005. The rule amends the State CRA regulation to make it compatible with the federal CRA regulations.

10. Compliance schedule:

Compliance with the rule is required upon its becoming effective.

Regulatory Flexibility Analysis

The rule makes amendments to Part 76, the State's CRA regulation, primarily to make it compatible with the recently amended federal CRA

regulations, which become effective September 1, 2005. All New York State-chartered banks must comply with both the State and federal CRA laws and regulations.

Effect of the rule:

With respect to asset size of the State-chartered banks, the rule specifically includes amendments to Part 76 similar to the changes recently adopted in the federal CRA regulations, that reduce the regulatory burden imposed on banks with an asset size between \$ 250 million and \$ 1 billion (referred to as "intermediate small banking institutions"), without regard to holding company affiliation. These amendments exempt intermediate small banking institutions from CRA loan data collection and reporting requirements. Also, the intermediate small banking institutions will not be subject to the lending, investment, and service CRA performance tests. Instead, their CRA performance will be evaluated under the small bank lending test combined with a flexible new community development CRA performance test. This has the effect of reducing regulatory burden on institutions that fall within this category because they are relieved from their obligation to collect and report information about small business, small farm, and community development loans.

The implementation of a new community development test for the intermediate small banking institutions will provide a more appropriate framework for assessing community reinvestment performance by these banks. The number and amount of community development loans, the number of qualified investments, and the provision of community development services by an intermediate small bank, and the bank's responsiveness through such activities to community development lending, investment, and service needs is evaluated in the context of the individual bank's capacities, business strategy, the bank's assessment area(s), and the number and types of opportunities for community development activities. Accordingly, because the performance standards for the intermediate small banking institutions will have the effect of reducing regulatory burden on these institutions, it is apparent that the amendments will not impose any appreciable or substantial adverse impact on State-chartered banks licensed under New York Law.

The rule affects State-chartered banks. It will have no effect on local governments because there are no local governments that are State-chartered banks.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. As is more fully described in the Regulatory Impact Statement, the rule contains amendments to Part 76 to make various changes with respect to the ways in which the CRA performance is assessed for banks with a certain asset size to make the State CRA rules compatible with the recently adopted amendments to the federal CRA regulation. The amendments to Part 76 also establish a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator. Additionally, amendments to Part 76 seek to clarify certain provisions of the existing State CRA regulation to assist the regulated entities whose CRA performance is being assessed. Finally, there are certain amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

Consequently, there is nothing about the character and nature of the rule that would make it difficult for, or prevent State-chartered banks from complying with the rule based on a particular office location. Accordingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

Job Impact Statement

The purpose of CRA is to encourage banking institutions to help meet the credit needs of their local communities, including low and moderate income neighborhoods, consistent with safe and sound operations. Every New York-State chartered bank must comply with both the State and federal CRA laws and regulations and is examined by State and federal regulators with respect to CRA. Recent amendments to the federal CRA regulation that apply to federal as well as State-chartered banks were adopted and will become effective September 1, 2005. Accordingly, the amendments to Part 76, the State's CRA regulations, are intended primarily to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law will not have to satisfy

conflicting sets of CRA regulations, thus substantially reducing their regulatory burden.

As is more fully described in the Regulatory Impact Statement, the rule contains amendments to Part 76 to make various changes with respect to the ways in which certain bank's CRA performance is assessed to make the State CRA rules compatible with the recently adopted amendments to the federal CRA regulation. Furthermore, amendments to Part 76 establish a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator. Additionally, amendments to Part 76 seek to clarify certain provisions of the existing State CRA regulation to assist the regulated entities whose CRA performance is being assessed. Finally, there are certain amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

Accordingly, based on the nature and purpose of the rule, it will have no impact on jobs in New York State.

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

Overdraft Protection Fee Disclosure

I.D. No. BNK-08-06-00007-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of emergency rule making, I.D. No. BNK-08-06-00007-E, printed in the *State Register* on February 22, 2006.

Regulatory Impact Statement

1. Statutory Authority. Sections 14-g and 14-h of the Banking Law authorize the Banking Board to adopt a rule or regulation permitting, respectively, banks and trust companies, and savings banks and savings and loan associations (hereafter "banking institutions"), to exercise the same rights and powers and engage in the same activities as, respectively, national banks and federal savings associations on substantively the same terms and conditions, to the extent that the Banking Law or other state law does not so authorize such rights, powers and activities for such banking institutions. However, sections 14-g and 14-h also authorize the Banking Board, in authorizing such rights, powers and activities, to impose by rule or regulation conditions or limitations in addition to those that imposed pursuant to federal law to the extent the Board determines necessary or appropriate.

2. Legislative Objectives. The Legislature intended that sections 14-g and 14-h of the Banking Law allow State-chartered banking institutions, by Banking Board adoption of rules and regulation, to exercise the same rights and powers, and engage in the same activities as federally chartered banking institutions without requiring that the Legislature enact additional amendments to the Banking Law. Presumably, if other provisions of the Banking Law or other state law did not empower State chartered banking institutions to do the same things or to the same extent as federally chartered banking institutions, or even conflicted with the authorizations granted federally chartered banking institutions to do so, sections 14-g and 14-h were intended to permit the Banking Board by rule or regulation to enable State chartered banking institutions to so operate in the same fashion as federally chartered institutions.

3. Needs and Benefits. In order that the account disclosures and required information therein addressed by the federal Guidances on Overdraft Protection Programs (Joint Guidance on Overdraft Protection Programs, 70 Federal Register 9127 (February 23, 2005), and Guidance on Overdraft Protection Programs, 70 Federal Register 8428 (February 18, 2005) and the federal regulations pertaining to the Truth in Savings Act (Regulation DD, 12 CFR Part 230)) be clearly set forth to customers and accountholders, the emergency rule requires State chartered banking institutions to provide a separate disclosure regarding any bounce protection that will apply to a new or existing account, beyond the one-time fee previously permitted by the Department's regulations. The information contained in the disclosure will need to conform to the standards specified by the federal Guidances and the TISA regulations. The purpose of this requirement is to ensure that particulars of bounce protection are not solely described within an account agreement's terms and conditions or a peri-

odic statement, though banking institutions presumably will continue to also set forth those particulars in the account agreements. Bounce protection programs may cause consumers to incur significant costs if the bounce protection feature is used extensively. The information contained in the required notice that is the subject of this rule making may well be overlooked by customers due to scope of other information contained in the account agreement and the statement, if it is not disclosed through a separate format.

4. Costs. There will be additional cost imposed on banking institutions by the giving of the separate notice, but the industry has indicated to the Department it does not object to the requirement.

5. Local Government Mandates. None.

6. Paperwork. This requirement will increase paperwork for banking institutions but this cannot be avoided as it is the objective of the rule making.

7. Duplication. The information contained in the required notice will be identical to the information contained in the account agreement's terms and conditions, or would otherwise be disclosed in a periodic account statement if the bounce protection program were applied to the account after it was opened.

8. Alternatives. There are no alternatives if the objective of the rule is to require a separate distinct and clear notice. Presumably, if banking institutions apply the product to accounts after being opened, they will not also disclose such information in the periodic account statements.

9. Federal Standards. The content of the disclosures and the requirements of when such disclosures must be given are specified in the federal Guidances and Regulation DD, as cited above, and apply to all insured accounts.

10. Compliance schedule. Banking institutions must commence giving such notices not later than 90 days following the publication date of the rule. Thereafter, pursuant to Regulation DD, banking institutions will need to give the notice when an account is initially opened and 30 days prior to applying a bounce protection program to an existing account. If the fees related to such program change following this required notice as they apply to existing accounts, then Regulation DD requires that notice be given 30 days prior the fees becoming effective, though such notice need not be a separate notice.

Regulatory Flexibility Analysis

1. Effect of rule: The emergency rule will require State-chartered banking institutions to provide a separate disclosure if a customer's bank account will be subject to bounce protection charges which go beyond the one-time fee previously permitted by the Department's regulations. This notice must be given either at the time the account is opened if bounce protection is one of the features of the account or if and when applied to an account after it has been opened. The content of such notice is prescribed pursuant to federal Guidances related to overdraft protection programs and federal Regulation DD, Truth in Savings, which applies to all deposit accounts. The information disclosed by banking institutions, absent the emergency rule, would be made either in the account agreement's terms and conditions when the account is opened, or in a periodic statement of account transactions if bounce protection were added as a feature of the account thereafter.

2. Compliance requirements: Banking institutions must provide such notice within 90 days after the effective date of this rule to accounts that have a bounce protection feature presently, to new accounts opened thereafter that have a bounce protection feature, or to existing accounts to which bounce protection is applied after such ninety day period.

3. Professional services: Banking institutions will not need additional professional services in order to execute this requirement.

4. Compliance costs: There will additional costs associated with providing a separate disclosure notice, but such costs should be minimal for all institutions.

5. Economic and technological feasibility: There are no economic or technological feasibility issues posed by this rule-making or the resulting regulatory requirement.

6. Minimizing adverse economic impact: This rule is the sole provision imposed by the Banking Board that goes beyond the federal regulatory requirements and standards that otherwise pertain to the bounce protection programs banking institutions provide to account holders.

7. Small business participation and local government participation: No local government participation was necessary as the rule has no effect upon local governments. The banking industry trade associations were advised of the rule requirement prior to adoption by the Banking Board and did not object. A member of the Board, who is a CEO of a small banking institu-

tion, advised during the discussion of the proposed emergency rule, that it poses no compliance problems for banking institutions.

Rural Area Flexibility Analysis A rural area flexibility analysis is not submitted with this rule making. The emergency rule will affect only banking institutions and such institutions in rural areas will not be held to any standards that differ from the standards applicable to banking institutions elsewhere in the state. Further, the regulatory requirement will not impose any adverse technological or economic burden upon such institutions. Presumably, the rule will benefit consumers located in rural areas, who are accountholders of banking institutions, by helping to ensure the accountholders are aware when bounce protection may be applied to their accounts, and thereby causes them to be knowledgeable of both the benefits and costs of such programs.

Job Impact Statement A job impact statement is not submitted with this rule making. The emergency rule will not affect adversely employment opportunities in banking institutions and will have no adverse effect upon other businesses. It is expected that the emergency rule will neither increase nor decrease job opportunities and employment in all areas of the state.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-05-00009-A

Filing No. 242

Filing date: Feb. 24, 2006

Effective date: March 15, 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 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 Insurance Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-36-05-00009-P, Issue of September 7, 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-49-05-00006-A

Filing No. 245

Filing date: Feb. 24, 2006

Effective date: March 15, 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 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 Health.

Text was published in the notice of proposed rule making, I.D. No. CVS-49-05-00006-P, Issue of December 7, 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-49-05-00007-A

Filing No. 244

Filing date: Feb. 24, 2006

Effective date: March 15, 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 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 Health.

Text was published in the notice of proposed rule making, I.D. No. CVS-49-05-00007-P, Issue of December 7, 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-49-05-00008-A

Filing No. 246

Filing date: Feb. 24, 2006

Effective date: March 15, 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 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 Department of Health.

Text was published in the notice of proposed rule making, I.D. No. CVS-49-05-00008-P, Issue of December 7, 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-49-05-00009-A

Filing No. 248

Filing date: Feb. 24, 2006

Effective date: March 15, 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 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 was published in the notice of proposed rule making, I.D. No. CVS-49-05-00009-P, Issue of December 7, 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-49-05-00010-A

Filing No. 249

Filing date: Feb. 24, 2006

Effective date: March 15, 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 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 State University of New York.

Text was published in the notice of proposed rule making, I.D. No. CVS-49-05-00010-P, Issue of December 7, 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-49-05-00011-A

Filing No. 243

Filing date: Feb. 24, 2006

Effective date: March 15, 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 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-49-05-00011-P, Issue of December 7, 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-49-05-00012-A

Filing No. 247

Filing date: Feb. 24, 2006

Effective date: March 15, 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 1 and Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete positions from the exempt and non-competitive classes in the Department of Health and Department of Family Assistance.

Text was published in the notice of proposed rule making, I.D. No. CVS-49-05-00012-P, Issue of December 7, 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.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Visiting in Special Housing Units

I.D. No. COR-11-06-00008-P

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

Proposed action: Amendment of section 302.2(i)(1)(ii) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112, 137(2) and 146

Subject: Visiting in special housing units.

Purpose: To clarify special precautions for visiting in special housing units.

Text of proposed rule: Subparagraph (ii) of paragraph (1) of subdivision (i) of section 302.2 of Title 7, NYCRR is hereby amended as follows:

(ii) Visits for persons in special housing units shall be in accordance with any special precautions deemed necessary or appropriate by the superintendent of the facility[.]. *Such special precautions may include, but are not limited to, restriction to noncontact visiting for all visits or with a specified visitor or visitors; denial of visiting with a specified visitor or visitors; or other special precautions to maintain the safety, security or good order of the department or its correctional facilities. However,* [but] no employee shall be permitted to monitor the content of conversation between an inmate and his legal or spiritual advisor.

Text of proposed 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

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

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

Regulatory Impact Statement

Statutory Authority:

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 and discipline of correctional facilities. Section 137(2) of the Correction Law authorizes the commissioner of correction to provide for such measures as he may deem necessary or appropriate for the safety, security and control of correctional facilities and the maintenance of order therein. Section 146 of the Correction Law empowers the commissioner of correction to prescribe rules and regulations governing visitation and the entrance into a correctional facility.

Legislative Objective:

By vesting the commissioner with this rule making authority, the legislature intended that the commissioner adopt regulations to vest the superintendent of a correctional facility with authority to impose precautions deemed necessary to ensure safe and secure operation of the correctional facility, including safe and secure visitation with inmates confined in special housing units or serving a penalty of confinement.

Needs and Benefits:

The existing regulation has been used by superintendents to address significant threats to safety and security, including but not limited to the prevention of introduction of contraband, violent conduct, and escape from

custody. The proposed amendment gives definition to the “special precautions” which superintendents have been authorized to impose on visits for persons in special housing units as they endeavor to ensure safety, security and good order. The new text makes it explicit that among any precautions deemed necessary by a superintendent, a superintendent has authority to restrict such an inmate to a venue in which the parties are physically separated from each other with all visitors (noncontact visiting), to restrict such an inmate to noncontact visiting with a specified visitor or visitors, or to deny such an inmate permission to visit a specified visitor or visitors.

This amendment gives visitors and inmates specific notice that a superintendent has authority to respond to any threat to safety, security and good order by limiting the visiting privileges for an inmate in special housing by imposing special precautions which may include denial of the visit or restriction to noncontact visiting in a particular case.

This amendment reaffirms the department’s commitment to safety, security and good order within special housing units and in correctional facility visiting rooms during visits with inmates confined in special housing units or serving a penalty of confinement.

Costs:

a. To State government: None.

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: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

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: None.

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:

The alternative of leaving the existing language in place was considered inadequate because it did not give visitors and inmates specific notice that a superintendent has authority to respond to any threat to safety, security and good order by limiting the visiting privileges for an inmate in special housing by imposing special precautions which may include denial of the visit or restriction to noncontact visiting in a particular case.

Federal Standards:

There are no minimum standards of the Federal government for this or a similar subject area, however, in its 2003 decision *Overton V. Bazzetta*, 539 U. S. 982, the United States Supreme Court upheld the constitutional validity of prison regulations limiting visitation in response to security problems including substance abuse by inmates. The rule is intended to enhance the safety, security and control of correctional facilities and to maintain order therein, and thus is consistent with Federal judicial precedent.

Compliance Schedule:

The Department of Correctional Services is expected to achieve compliance with the proposed rule immediately.

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 gives visitors and inmates specific notice that a superintendent has authority to respond to any threat to safety, security and good order that arises in conjunction with a visit for an inmate in special housing by imposing special precautions which may include denial of the visit or restriction to noncontact visiting in a particular case.

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 proposal merely gives visitors and inmates specific notice that a superintendent has authority to respond to any threat to safety, security and good order that arises in conjunction with a visit for an inmate in special housing by imposing

special precautions which may include denial of the visit or restriction to noncontact visiting in a particular case.

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 proposal merely gives visitors and inmates specific notice that a superintendent has authority to respond to any threat to safety, security and good order that arises in conjunction with a visit for an inmate in special housing by imposing special precautions which may include denial of the visit or restriction to noncontact visiting in a particular case.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

School District Financial Accountability

I.D. No. EDU-11-06-00017-EP

Filing No. 254

Filing date: Feb. 28, 2006

Effective date: Feb. 28, 2006

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

Action taken: Amendment of sections 170.12, 170.2 and 170.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 1604(35), 1709(20-a), 1711(2)(e), 1950(4)(k), 2102-a(1) through (4), 2116-a(3), 2116-b(1) through (7), 2116-c(1) through (9), 2117(1), 2503(5), 2508(5), 2509(4), 2523(2), 2524(1), 2525(1) and (2), 2526(1), (1-a) and (2), 2527 (not subdivided), 2554(2-a), 2562(2), 2566(6), 2573(4), 2576(1)(a), 2580(2) and 3713(1) and (2), and L. 2005, ch. 263

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

Specific reasons underlying the finding of necessity: The proposed rule is needed to conform the Commissioner's Regulations to Chapter 263 of the Laws of 2005.

Education Law section 2102-a, as added by Chapter 263 of the Laws of 2005, requires every trustee or member of a board of education of a school district or a board of cooperative educational services (BOCES), elected or appointed for a term beginning on or after July 1, 2005, to complete, within the first year of his or her term, a minimum of six hours of training on the financial oversight, accountability, and fiduciary responsibilities of a board member. The statute further requires the Commissioner of Education to approve all providers and curriculums of such training. Consistent with the statute, proposed section 170.12(a) establishes criteria for the training and the Commissioner's approval of training providers.

Chapter 263 of the Laws of 2005 added Education Law sections 2116-b and 2116-c, and amended Education Law section 1950(4)(k), to require school districts and BOCES to establish an internal audit function no later than July 1, 2006, with the internal audit function to be in operation no later than December 31, 2006, pursuant to regulations promulgated by the Commissioner in consultation with the Comptroller. Consistent with the statute, proposed section 170.12(b) establishes criteria for the conduct of the internal audit function.

Chapter 263 of the Laws of 2005 added a new subdivision 35 to Education Law section 1604, and amended Education Law sections 1709(20-a), 1711(2)(e), 1950(4)(k), 2503(5), 2508(5), 2509(4), 2523(2), 2524(1), 2525, 2526, 2527, 2554(2-a), 2562(2), 2566(6), 2573(4), 2576(1), and 2580(2) to provide for the discretionary appointment by school districts and BOCES of a claims auditor. Consistent with the statute, proposed section 170.12(c) specifies the qualifications for the position, duties, and the individual or organizations that can be appointed as claims auditor.

Chapter 263 of the Laws of 2005 added Education Law section 2116-c to require school districts to establish, no later than January 1, 2006, an audit committee pursuant to regulations promulgated by the Commissioner. Consistent with the statute, proposed section 170.12(d) of the

Regulations specifies the requirements related to the establishment of an audit committee, the duties and responsibilities of an audit committee and specifies its role as advisory.

Education Law section 2116(a) requires that most districts obtain an annual audit of their records by an independent certified public accountant or an independent public accountant. Chapter 263 of the Laws of 2005 amended Education Law section 2116-a(3) to require school districts, on or after July 1, 2005, to utilize a competitive request for proposal process when contracting for their annual audit, and to prepare a corrective action plan in response to certain findings. Consistent with the statute, proposed section 170.12(e) establishes criteria relating to the annual audit, the request for proposal process, and the corrective action plan.

The effective dates for the respective requirements of Chapter 263 of the Laws of 2005 vary. The provisions regarding training in fiscal accountability require board members elected or appointed for a term beginning on or after July 1, 2005, to complete such training within the first year of his or her term (i.e. June 30, 2006). Emergency action to adopt the proposed rule is necessary so that the Commissioner may timely approve providers and curriculums so that board members may complete their training by the statutory deadline. The provisions relating to internal audit function require school districts and BOCES to establish an internal audit function no later than July 1, 2006, with the internal audit function to be in operation no later than December 31, 2006. Emergency action to adopt criteria relating to the internal audit function will ensure sufficient time for school districts and BOCES to establish and operate their internal audit functions by the statutory deadline. The provisions relating to audit committees require the establishment of the committees no later than January 1, 2006. Emergency action is necessary to immediately conform the Commissioner's Regulations to the statute and establish requirements relating to the duties, responsibilities and conduct of audit committees. In addition, the provisions relating to the request for proposal process require the process be utilized when contracting for the annual audit on or after July 1, 2005 and the provisions relating to claims auditor generally became effective July 19, 2005. Emergency action is necessary to immediately conform the Commissioner's Regulations to these statutory requirements.

Because the Board of Regents meets at fixed intervals, the earliest the proposed rule could be presented for regular adoption, after publication in the State Register and expiration of the 45-day public comment period, is the May 22-23, 2006 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest effective date of the rule would be June 14, 2006, the date a Notice of Adoption would be published in the State Register.

Emergency action to adopt the proposed rule is necessary to ensure the timely implementation of Chapter 263 of the Laws of 2005 by immediately establishing requirements relating to school district financial accountability, including criteria for the approval of training providers, the conduct of the internal audit function, the qualifications and duties relating to the appointment of a claims auditor, the establishment, duties and responsibilities of an audit committee, and the conduct of the annual audit, including a request for proposal process and corrective action plans.

It is anticipated that the proposed rule 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: School district financial accountability.

Purpose: To implement chapter 263 of the Laws of 2005 by establishing criteria for claims auditor, financial training for school district officers, internal audit function, request for proposals (RFP) process for contracting for annual audit, audit committees and annual audits.

Substance of emergency/proposed rule (Full text is posted at the following State website: emsc.nysed.gov/mgtserv): The State Education Department proposes to add a new section 170.12 and amend sections 170.2 and 170.3 of the Regulations of the Commissioner of Education, effective February 28, 2006. The following is a summary of the provisions of the proposed rule.

Section 170.12(a) requires every trustee or member of a board of education of a school district or a board of cooperative educational services (BOCES), elected or appointed for a term beginning on or after July 1, 2005, to complete, within the first year of his or her term, a minimum of six hours of training on the financial oversight, accountability, and fiduciary responsibilities of a board member.

Section 170.12(a)(1) states that the training may be provided by the State Education Department, the Office of the State Comptroller, or other

provider approved by the Commissioner of Education. The section also provides information on the approval process for the trainers.

Section 170.12(a)(2) requires that the provider of the training supply each participant who successfully completes all or part of the required six hours of training with a certificate of completion, as appropriate. The section also requires that each trustee or board member file the certificate with the district clerk.

Section 170.12(a)(3) sets forth applicability provisions for the training requirement, and specifies that upon completion of the training requirements, no trustee or board member shall be required to repeat such training.

Section 170.12(b) requires school districts and BOCES to establish an internal audit function no later than July 1, 2006, with the internal audit function to be in operation no later than December 31, 2006.

Section 170.12(b)(1) specifies the minimum requirements for the internal audit function including an initial risk assessment of district operations, an annual review and update of such risk assessment, annual testing and evaluation of one or more areas, and preparation of reports, which analyze significant risk assessment findings, recommend changes for strengthening controls and reducing identified risks, and specify timeframes for implementation of such recommendations.

Section 170.12(b)(2) establishes criteria for the conduct of the internal audit function, including that personnel or entities conducting internal audits, reviews, or risk assessments shall follow generally accepted auditing standards, and shall be independent of district or BOCES business operations; and have the requisite knowledge and skills to complete the work. This section also states a district or BOCES may use its employees, inter-municipal cooperative agreements, shared services to the extent authorized by Education Law section 1950, or independent contractors to fulfill the internal audit function, provided that personnel or entities performing the function meet professional auditing standards for independence between the auditor and the district.

Section 170.12(b)(3) provides exemptions from the internal audit function requirements for districts employing fewer than eight teachers, districts with actual general fund expenditures totaling less than five million dollars in the previous school year, and districts with actual enrollment of less than three hundred students in the previous school year. Any school district claiming an exemption shall annually certify to the Commissioner that it meets the requirements set forth in this paragraph.

Section 170.12(c) specifies criteria relating to the establishment of the office of claims auditor and the appointment of a claims auditor.

Section 170.12(c)(1) specifies the qualifications of the position and specifically prohibits certain individuals from the position. It further clarifies that the claims auditor does not have to be a resident of the district.

Section 170.12(c)(2) specifies that the claims auditor shall report directly to the trustees or board on the result of the audits of claims, and shall report, as determined by the trustees or board of education, to the clerk of the school district or board of education or to the superintendent of schools, for administrative matters.

Section 170.12(c)(3) permits the delegation of the auditing of claims to an individual through the use of a school district or BOCES employee who is not prohibited from being the claims auditor, an inter-municipal cooperative agreement, shared services to the extent authorized by Education Law section 1950, or independent contractors. The regulation also defines the independence requirement for the claims auditor.

Section 170.12(d)(1) provides that school districts and BOCES shall establish an audit committee by January 1, 2006. The audit committee shall consist of at least three members, who shall serve without compensation but may be reimbursed for actual and necessary expenditures. The audit committee may be a committee of the trustees or board members, a committee of the whole, or an advisory committee. Persons other than trustees or board members who serve on an advisory committee shall be independent as defined in the regulations.

Section 170.12(d)(2) specifies the duties and responsibilities of an audit committee and specifies its role as advisory. It is responsible for providing recommendations regarding the appointment of the external auditor for the district, meeting with the external auditor prior to commencement of the audit, reviewing and discussing with the external auditor any risk assessment of the district's fiscal operations, receiving and reviewing the draft annual audit report and accompanying draft management letter and, making a recommendation to the trustees or board on accepting the annual audit report, reviewing every corrective action plan developed, and assisting in the oversight of the internal audit function.

The audit committee shall develop, and submit to the trustees or board of education for approval, a formal, written charter which includes

provisions regarding its purpose, mission, duties, responsibilities and membership requirements.

Section 170.12(d)(3) provides exemptions from the audit committee requirement for school districts employing fewer than eight teachers, and the city school district of the city of New York, provided that the Chancellor of such school district shall annually certify to the Commissioner that such district has a process for review by an audit committee of the district's annual audit that meets or exceeds the requirements of this subdivision.

Section 170.12(e)(1) specifies that each school district, except those employing fewer than eight teachers, and each BOCES shall obtain an annual audit of its records by an independent certified public accountant or an independent public accountant.

Section 170.12(e)(2) requires that the independent accountant shall present the report of the annual audit to the trustees or board of education and provide a copy of the audit to each trustee or board member. The trustees or board of education shall adopt a resolution accepting the audit report and shall file a copy of the resolution with the Commissioner. A school district or BOCES shall file with the Commissioner its audit report for a specific school year by October 30th of the following school year; provided that the city school districts of the cities of Buffalo, Rochester, Syracuse and Yonkers, and the city school district of the city of New York and community districts of such city school district, shall file their audit reports with the Commissioner by January 1st of such following school year.

Section 170.12(e)(3) requires that on or after July 1, 2005, all school districts, except the city school district of the city of New York, and each BOCES shall utilize a competitive request for proposal process when contracting for its annual audit. In addition, on or after July 1, 2005, no audit engagement shall be for a term longer than five consecutive years.

Section 170.12(e)(4) states that within ninety days of receipt of an audit report or management letter, each school district superintendent and BOCES district superintendent shall prepare a corrective action plan, approved by the board, in response to any findings contained in the annual external audit report or management letter, a final audit report issued by the district's internal auditor, a final audit report issued by the State Comptroller, a final audit report issued by the State Education Department, or a final audit report issued by the United States or an office, agency or department thereof. Each school district and BOCES shall file its corrective action plan with the State Education Department.

Section 170.2(d) is amended to clarify that the requirement regarding the filing of an official undertaking applies to the claims auditor.

Section 170.2(r) is amended to delete requirements relating to the filing of a school district's annual audit that have been superceded by the new section 170.12(e).

Section 170.3(a) is amended to delete requirements relating to the filing of a BOCES' annual audit that have been superceded by the new section 170.12(e).

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 28, 2006.

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

Data, views or arguments may be submitted to: Michael Abbott, Education Department, Office of Audit Services, State Education Bldg., Rm. 524, 89 Washington Ave., Albany, NY 12234, (518) 473-4516, e-mail: mabbott@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 215 provides that the Regents, or the Commissioner, or their representatives, may visit, examine into and inspect, any institution in the University of the State of New York and any school or institution under the educational supervision of the State, and may require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational

system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law. Section 305(25) directs the Commissioner to conduct periodic fiscal audits of boards of cooperative educational services (BOCES).

Education Law section 1950(4)(k), as amended by Chapter 263 of the Laws of 2005, provides that the receipt, deposit, investment and disbursement of moneys by a BOCES, and all procedures relating thereto, including, but not limited to the requirements for signatures, the appointment of a claims auditor to approve claims for purchases, and the optional use of claim forms, and the establishment of an internal audit function, shall be subject to the laws relating to union free school districts.

Education Law section 2117(1) provides that the school authorities of each school district shall make a full report to the Commissioner upon an particular matter relating to their schools whenever such report shall be required by the Commissioner.

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

Chapter 263 of the Laws of 2005 added a new subdivision 35 to Education Law section 1604, and amended Education Law sections 1709(20-a), 1711(2)(e), 1950(4)(k), 2503(5), 2508(5), 2509(4), 2523(2), 2524(1), 2525, 2526, 2527, 2554(2-a), 2562(2), 2566(6), 2573(4), 2576(1), and 2580(2) to provide for the discretionary appointment by school districts and BOCES of a claims auditor.

Chapter 263 of the Laws of 2005 added a new Education Law section 2102-a to require training on the financial oversight, accountability and fiduciary responsibilities of members of boards of education and BOCES pursuant to curriculum approved by the Commissioner in consultation with the Comptroller.

Chapter 263 of the Laws of 2005 amended Education Law section 2116-a(3) to require school districts to utilize a competitive request for proposal process when contracting for their annual audit, and to prepare a corrective action plan in response to certain findings.

Chapter 263 of the Laws of 2005 added section 2116-b and 2116-c, and amended Education Law section 1950(4)(k), to require school districts and BOCES to establish an internal audit function pursuant to regulations promulgated by the Commissioner in consultation with the Comptroller, and to establish an audit committee pursuant to regulations promulgated by the Commissioner.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and its necessary to implement Chapter 263 of the Laws of 2005 by establishing criteria for school district financial accountability.

NEEDS AND BENEFITS:

The proposed rule is needed to implement the statutory requirements. The rule establishes systems and processes that provide for transparency and accountability in the conduct of district business, strengthens oversight, and increases accountability. It will help ensure the \$38 billion spent annually by school districts and BOCES is used in an effective and efficient manner.

Six key areas are addressed:

Requirements for training of school board and BOCES members

- Establishment of an internal audit function
- Clarifications related to the position of claims auditor
- Enhancements related to external audits
- Establishment of an audit committee, and
- The requirement to use a request for proposal (RFP) for the procurement of the annual audit of the financial statements.

COSTS:

The rule is necessary to implement Chapter 263 of the Laws of 2005 and does not impose any additional costs beyond those inherent in the statute.

a. Costs to State government:

None.

b. Costs to local governments:

The new requirements will result in additional costs to school districts and BOCES, as follows:

(i) Board Training – The statute requires that each board member elected for a period on or after July 1, 2005 shall receive a minimum of six hours training. There are approximately 5,200 school district and BOCES board members in the State and assuming a cost of \$150 per board member for the training, the total estimated cost to train all Board members during the first three years is \$780,000. Since the requirement is being phased in,

the estimated annual cost is \$270,000 for each of the first three years. Once fully implemented, the annual on-going cost is estimated to be \$135,000 annually. The New York City Department of Education is exempt from this requirement if certain conditions are met.

(ii) Internal Audit Function – Most districts are required to have an internal audit function. The statute exempts districts with fewer than eight teachers, districts with general fund expenditures totaling less than five million dollars, districts with actual enrollment of less than 300 students and districts or BOCES that have an internal audit function that meets or exceeds the requirements. For these districts, no additional cost is required to be incurred.

For all other districts, the statute provides much flexibility and permits a district to hire its own staff or an independent contractor, or use inter-municipal agreements or shared services to the extent authorized. While the districts are required to conduct an initial risk assessment and update it annually, districts determine the number of areas that are reviewed annually. Given this flexibility and the lack of data on the cost of an internal audit function, it is not possible to reasonably estimate the costs.

(iii) Audit Committee – The requirement for an audit committee will not result in any significant costs to school districts and BOCES. The statute does not permit any payments to the audit committee member for their service other than the reimbursement of actual and necessary expenditures incurred in relation to attendance at meetings. However, it is not anticipated that the cost will be significant.

(iv) Claims Auditor – The statute enhances the effectiveness of the Office of the Claims Auditor by placing restrictions on the individuals that may be appointed to the position. However, the statute did not amend the authority of the Board to audit each claim rather than appoint a claims auditor. For some districts that assigned the claims auditor duties to an existing employee such as the superintendent's secretary, there may be an additional cost to these districts. However, given the variations in size, locations, regional cost indexes, and volume of expenditures, it is not possible to reasonably estimate the costs.

(v) External Auditor – The statute requires that districts use a request for proposal process to hire the independent auditor. There are no estimates whether the cost of external auditor will increase or decrease given this requirement. Generally, competition would be expected to lower the costs, but given the school district environment and concerns with the adequacy of work, cost may, in fact, increase. There is no data readily available to estimate the impact of this requirement. It is anticipated that the other requirements – reporting the results to the full board, increasing the involvement of the audit committee in the audit process, and development of corrective action plans – will have no significant impact on costs.

c. Costs to private, regulated parties:

There are no anticipated additional costs to private, regulated parties.

d. Costs to the Department of implementation and continuing compliance:

It is anticipated that the costs associated with the State Education Department's approval of training providers and curriculum, and any necessary oversight of school district and BOCES compliance with the statutory provisions, can be assumed by existing staff and resources. The Department may need to reassign priorities to permit staff to provide guidance and answer questions on the new requirements.

LOCAL GOVERNMENT MANDATES:

Consistent with Chapter 263 of the Laws of 2005, the proposed rule requires that each board member of a school district and BOCES receive six hours of training. It also requires most school districts and BOCES to establish an internal audit function and an audit committee. Finally, the rule requires that school districts and BOCES use a request for proposal for obtaining the annual audit of its records by an independent accountant.

PAPERWORK:

The proposed rule requires the following reporting requirements:

1. An application for approval as an approved provider of training and an application for approval of the curriculum must be submitted to the Commissioner.

2. A certificate of completion of training must be provided to each participant that successfully approves the training and the certificate should be filed with the district clerk.

3. The internal audit function must include reports that analyze significant risk assessment findings and recommend changes to strengthen controls.

4. Any district exempt from the requirement to establish an internal audit function is required to annually certify to the Commissioner that the district meets the exception requirements.

5. Each school district and BOCES that is required to establish an audit committee must prepare an annual report and develop a formal written charter defining the committee's purpose, mission duties, responsibilities, and membership requirement.

6. Any district except from the requirement to establish an audit committee is required to annually certify to the Commissioner that the district meets the exception requirements.

DUPLICATION:

The proposed rule will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to implement Chapter 263 of the Laws of 2005.

ALTERNATIVES:

The Department considered permitting the claims auditor to also be the internal auditor. However, the Department believes that the same individual or entity should not be appointed to both positions, due to concerns with independence. For the work of the internal auditors to be objective, they cannot function as the claims auditor and review and approve claims and also audit the claims auditor's review and approval process.

The Department considered leaving out any requirement related to an audit committee charter. However, the Department concluded that requiring a charter and specifying some minimum provisions for the charter would help ensure that the members of the audit committee and the board understand the purpose, mission, duties, responsibilities, and membership requirement of the audit committee.

The Department considered exempting from the requirement to establish an audit committee those districts that had fewer than 8 teachers, actual general fund expenditures of less than \$5 million, or actual enrollment of less than 300 students, from the audit committee requirement. However, the statute is quite clear as exempting districts from the audit committee requirement only if they have fewer than eight teachers.

FEDERAL STANDARDS:

The proposed rule does not exceed any minimum federal standards, and is necessary to implement Chapter 263 of the Laws of 2005.

COMPLIANCE SCHEDULE:

The proposed rule is necessary to implement Chapter 263 of the Laws of 2005. The statute specifies deadlines for certain requirements. The statute provides that a board member elected or appointed for a term beginning on or after July 1, 2005 must complete the required fiscal training within the first year of his or her term. The statute requires that the internal audit function be established no later than July 1, 2006 and be in operation by December 31, 2006. The new requirements for the claims auditor pursuant to Chapter 263 became effective July 19, 2005. The statute also requires that school districts and BOCES establish audit committees by January 1, 2006. The effective date for the requirement to use a request for proposal for the annual audit was established pursuant to Chapter 263 and became effective July 19, 2005.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule is necessary to implement Chapter 263 of the Laws of 2005, relating to school district financial accountability. The proposed amendment applies to school districts and boards of cooperative educational services (BOCES), and establishes criteria, consistent with Chapter 263, for school district and BOCES financial accountability. The proposed rule does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local government:

EFFECT OF RULE:

The proposed amendment applies, with certain exceptions noted below, to all public school districts and boards of cooperative educational services (BOCES) in the State, and establishes criteria, consistent with Chapter 263, for training of school district and BOCES board members in financial oversight, accountability and fiduciary responsibilities; the establishment of an internal audit function; the establishment of a claims auditor; the establishment of audit committees; and for an annual audit, including a requirement that a competitive request for proposal (RFP) process be used when contracting for the annual audit.

Section 170.12(b)(3) provides exemptions from the internal audit function requirement for districts employing fewer than eight teachers, districts with actual general fund expenditures totaling less than five million dollars in the previous school year, and districts with actual enrollment of less than three hundred students in the previous school year.

Section 170.12(d)(3) provides an exemption from the requirement that school districts appoint an audit committee for school districts employing fewer than eight teachers and for the city school district of the City of New York, provided that the Chancellor of the New York City school district shall annually certify to the Commissioner that such district has a process for review by an audit committee of the district's annual audit that meets or exceeds the requirements of this subdivision.

Section 170.12(e)(1) exempts school districts employing fewer than eight teachers from the requirement that school districts obtain an annual audit of their records by an independent certified public accountant or an independent public accountant.

Section 170.12(e)(3) exempts the New York City School District from the requirement that a competitive request for proposal (RFP) process be used when contracting for a school district's annual audit.

COMPLIANCE REQUIREMENTS:

The proposed rule requires that each board member of a school district or BOCES receive six hours of training. It also requires most school districts and BOCES to establish an internal audit function and an audit committee, and requires that an RFP process be used to contract for the annual audit.

In addition, the proposed rule requires the following reporting requirements:

1. An application for approval as an approved provider of training and an application for approval of the curriculum must be submitted to the Commissioner.

2. A certificate of completion of training must be provided to each participant that successfully approves the training and the certificate should be filed with the district clerk.

3. The internal audit function must prepare reports that analyze significant risk assessment findings and recommend changes to strengthen controls.

4. Any district exempt from the requirement to establish an internal audit function is required to annually certify to the Commissioner that the district meets the exception requirements.

5. Each school district and BOCES that is required to establish an audit committee must prepare an annual report and develop a formal written charter defining the committee's purpose, mission duties, responsibilities, and membership requirement.

6. Any district except from the requirement to establish an audit committee is required to annually certify to the Commissioner that the district meets the exception requirements.

PROFESSIONAL SERVICES:

School districts and BOCES will need the services of an experienced professional to provide training to board members. It is anticipated that much of the training will be provided by the State Education Department, the Office of the State Comptroller, and educational organizations.

School Districts and BOCES will need the services of a qualified auditor to meet the requirements to establish an internal audit function. However, the regulation does not require that the individual or entity completing the internal audit function be a certified public accountant, or certified internal auditor.

School districts and BOCES will need the services of individuals that collectively possess knowledge in accounting, auditing, financial reporting, and school district finances to serve on the audit committee.

COMPLIANCE COSTS:

The proposed rule is necessary to implement Chapter 263 of the Laws of 2005 and does not impose any additional costs beyond those inherent in the statute. The new requirements will result in additional costs to school districts and BOCES, as follows:

(i) Board Training – The statute requires that each board member elected for a period on or after July 1, 2005 shall receive a minimum of six hours training. There are approximately 5,200 school district and BOCES board members in the State and assuming a cost of \$150 per board member for the training, the total estimated cost to train all Board members during the first three years is \$780,000. Since the requirement is being phased in, the estimated annual cost is \$270,000 for each of the first three years. Once fully implemented, the annual on-going cost is estimated to be \$135,000 annually. The New York City Department of Education is exempt from this requirement if certain conditions are met.

(ii) Internal Audit Function – Most districts are required to have an internal audit function. The statute exempts districts with fewer than eight teachers, districts with general fund expenditures totaling less than five million dollars, districts with actual enrollment of less than 300 students and districts or BOCES that have an internal audit function that meets or

exceeds the requirements. For these districts, no additional cost is required to be incurred.

For all other districts, the statute provides much flexibility and permits a district to hire its own staff or an independent contractor, or use inter-municipal agreements or shared services to the extent authorized. While the districts are required to conduct an initial risk assessment and update it annually, districts determine the number of areas that are reviewed annually. Given this flexibility and the lack of data on the cost of an internal audit function, it is not possible to reasonably estimate the costs.

(iii) Audit Committee – The requirement for an audit committee will not result in any significant costs to school districts and BOCES. The statute does not permit any payments to the audit committee member for their service other than the reimbursement of actual and necessary expenditures incurred in relation to attendance at meetings. However, it is not anticipated that the cost will be significant.

(iv) Claims Auditor – The statute enhances the effectiveness of the Office of the Claims Auditor by placing restrictions on the individuals that may be appointed to the position. However, the statute did not amend the authority of the Board to audit each claim rather than appoint a claims auditor. For some districts that assigned the claims auditor duties to an existing employee such as the superintendent's secretary, there may be an additional cost to these districts. However, given the variations in size, locations, regional cost indexes, and volume of expenditures, it is not possible to reasonably estimate the costs.

(v) External Auditor – The statute requires that districts use a request for proposal process to hire the independent auditor. There are no estimates whether the cost of external auditor will increase or decrease given this requirement. Generally, competition would be expected to lower the costs, but given the school district environment and concerns with the adequacy of work, cost may, in fact, increase. There is no data readily available to estimate the impact of this requirement. It is anticipated that the other requirements – reporting the results to the full board, increasing the involvement of the audit committee in the audit process, and development of corrective action plans – will have no significant impact on costs.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The economic impact on school districts and BOCES is not expected to be significant and is discussed in the Compliance Costs section above. The rule provides flexibility in implementing many of the provisions and exempts smaller districts from certain of the requirements. The regulation does not impose any requirements that would adversely impact technological feasibility.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 263 of the Laws of 2005. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt school districts and BOCES from coverage by the rule. Nevertheless, a substantial effort was made to involve school districts and BOCES in the development of this rule, and to the extent possible, the proposed rule has been drafted incorporating their comments, to provide flexibility in implementing many of the provisions and, consistent with the statute, to exempt smaller districts and the New York City School District from certain of the requirements. For example, the proposed rule provides that a board member shall be deemed to have met the training requirement in section 170.12(a) if such person can provide sufficient documentation to establish completion, on or after July 1, 2004 and prior to January 1, 2006, a training program substantially equivalent to an approved curriculum by an approved provider. The training may be provided in one session or in partial increments. Upon demonstration of compliance with the training requirements, no board member shall be required to repeat the training. School districts and BOCES may use its employees, inter-municipal cooperative agreements, shared services to the extent authorized by Education Law section 1950, or independent contractors to fulfill the internal audit function under section 170.12(b). Furthermore, districts employing fewer than eight teachers, districts with actual general fund expenditures of less than five million dollars, and districts with actual enrollment of less than 300 students are exempt from the requirement to establish an internal audit function. For those that are required to establish an internal audit function, the regulations provide flexibility in the number of areas of internal controls that should be reviewed annually. A school district or BOCES with an internal audit function that meets or exceeds the requirements of Education Law section 2116-b shall not be required to replace or modify its existing internal audit function. A claims auditor under section 170.12(c) shall not be required to be a resident of the school district or BOCES supervisory district. A school district or BOCES may delegate the auditing of claims to

an individual through the use of school district or BOCES employees (where not otherwise prohibited), an inter-municipal cooperative agreement, shared services to the extent authorized by Education Law section 1950 or independent contractors. Audit committees established pursuant to section 170.12(d) may consist of either: (a) a committee of the trustees or board members; (b) a committee of the whole; or (c) an advisory committee, which may be composed entirely of persons other than trustees or board members, if advisable to provide accounting and auditing experience.

LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed rule have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. School districts, BOCES, and the public were provided the opportunity to provide comments on the proposed regulations. The draft regulations were available on the Department's website and comments were requested from various educational organizations and the Office of the State Comptroller. Over 20 written comments and numerous verbal comments were received for consideration and many were incorporated into the proposed rule.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

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

Section 170.12(b)(3) provides exemptions from the internal audit function requirement for districts employing fewer than eight teachers, districts with actual general fund expenditures totaling less than five million dollars in the previous school year, and districts with actual enrollment of less than three hundred students in the previous school year.

Section 170.12(d)(3) provides an exemption from the requirement that school districts appoint an audit committee for school districts employing fewer than eight teachers and for the city school district of the City of New York.

Section 170.12(e)(1) exempts school districts employing fewer than eight teachers from the requirement that school districts obtain an annual audit of their records by an independent certified public accountant or an independent public accountant.

Section 170.12(e)(3) exempts the city school district of the city of New York from the requirement that a competitive request for proposal process be used when contracting for a school district's annual audit.

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

The proposed rule requires that each board member of a school district and BOCES receive six hours of training. It also requires most school districts and BOCES to establish an internal audit function and an audit committee. The proposed rule also requires that school districts and BOCES use a request for proposal for obtaining the annual audit of its records by an independent accountant.

In addition, the proposed rule requires the following reporting requirements:

1. An application for approval as an approved provider of training and an application for approval of the curriculum must be submitted to the Commissioner of Education.
2. A certificate of completion of training must be provided to each participant that successfully approves the training and the certificate should be filed with the district clerk.
3. The internal audit function must prepare reports that analyze significant risk assessment findings and recommend changes to strengthen controls.
4. Any district exempt from the requirement to establish an internal audit function is required to annually certify to the Commissioner that the district meets the exception requirements.
5. Each school district and BOCES that is required to establish an audit committee must prepare an annual report and develop a formal written charter defining the committee's purpose, mission duties, responsibilities, and membership requirement.
6. Any district exempt from the requirement to establish an audit committee is required to annually certify to the Commissioner that the district meets the exception requirements.

School districts and BOCES will need the services of an experienced professional to provide training to board members. It is anticipated that much of the training will be provided by the State Education Department, the Office of the State Comptroller, and educational organizations.

School Districts and BOCES will need the services of a qualified auditor to meet the requirements to establish an internal audit function. However, the regulation does not require that the individual or entity completing the internal audit function be a certified public accountant, or certified internal auditor.

School districts and BOCES will need the services of individuals that collectively possess knowledge in accounting, auditing, financial reporting, and school district finances.

COSTS:

The proposed rule is necessary to implement Chapter 263 of the Laws of 2005 and do not impose any additional costs beyond those inherent in the statutes. The new requirements will result in additional costs to school districts and BOCES. A discussion of the cost for each of the requirements follows:

(i) Board Training – The statute requires that each board member elected for a period on or after July 1, 2005 shall receive a minimum of six hours training. There are approximately 5,200 school district and BOCES board members in the State and assuming a cost of \$150 per board member for the training, the total estimated cost to train all Board members during the first three years is \$780,000. Since the requirement is being phased in, the estimated annual cost is \$270,000 for each of the first three years. Once fully implemented, the annual on-going cost is estimated to be \$135,000 annually. The New York City Department of Education is exempt from this requirement if certain conditions are met.

(ii) Internal Audit Function – Most districts are required to have an internal audit function. The statute exempts districts with fewer than eight teachers, districts with general fund expenditures totaling less than five million dollars, districts with actual enrollment of less than 300 students and districts or BOCES that have an internal audit function that meets or exceeds the requirements. For these districts, no additional cost is required to be incurred.

For all other districts, the statute provides much flexibility and permits a district to hire its own staff or an independent contractor, or use inter-municipal agreements or shared services to the extent authorized. While the districts are required to conduct an initial risk assessment and update it annually, districts determine the number of areas that are reviewed annually. Given this flexibility and the lack of data on the cost of an internal audit function, it is not possible to reasonably estimate the costs.

(iii) Audit Committee – The requirement for an audit committee will not result in any significant costs to school districts and BOCES. The statute does not permit any payments to the audit committee member for their service other than the reimbursement of actual and necessary expenditures incurred in relation to attendance at meetings. However, it is not anticipated that the cost will be significant.

(iv) Claims Auditor – The statute enhances the effectiveness of the Office of the Claims Auditor by placing restrictions on the individuals that may be appointed to the position. However, the statute did not amend the authority of the Board to audit each claim rather than appoint a claims auditor. For some districts that assigned the claims auditor duties to an existing employee such as the superintendent’s secretary, there may be an additional cost to these districts. However, given the variations in size, locations, regional cost indexes, and volume of expenditures, it is not possible to reasonably estimate the costs.

(v) External Auditor – The statute requires that districts use a request for proposal process to hire the independent auditor. There are no estimates whether the cost of external auditor will increase or decrease given this requirement. Generally, competition would be expected to lower the costs, but given the school district environment and concerns with the adequacy of work, cost may, in fact, increase. There is no data readily available to estimate the impact of this requirement. It is anticipated that the other requirements – reporting the results to the full board, increasing the involvement of the audit committee in the audit process, and development of corrective action plans – will have no significant impact on costs.

There are no anticipated additional costs to private regulated parties.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 263 of the Laws of 2005 and is generally applicable, with certain exceptions, to all school districts and BOCES throughout the State. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt school districts and BOCES in rural areas from coverage by the rule. Nevertheless, a substantial effort was made to involve school districts and BOCES, including those located in rural areas, in the development of this rule, and to the extent possible, the proposed rule has been drafted incorporating their comments, to provide flexibility in implementing many

of the provisions and, consistent with the statute, to exempt smaller districts and the New York City School District from certain of the requirements. For example, the proposed rule provides that a board member shall be deemed to have met the training requirement in section 170.12(a) if such person can provide sufficient documentation to establish completion, on or after July 1, 2004 and prior to January 1, 2006, a training program substantially equivalent to an approved curriculum by an approved provider. The training may be provided in one session or in partial increments. Upon demonstration of compliance with the training requirements, no board member shall be required to repeat the training. School districts and BOCES may use its employees, inter-municipal cooperative agreements, shared services to the extent authorized by Education Law section 1950, or independent contractors to fulfill the internal audit function under section 170.12(b). Furthermore, districts employing fewer than eight teachers, districts with actual general fund expenditures of less than five million dollars, and districts with actual enrollment of less than 300 students are exempt from the requirement to establish an internal audit function. For those that are required to establish an internal audit function, the regulations provide flexibility in the number of areas of internal controls that should be reviewed annually. A school district or BOCES with an internal audit function that meets or exceeds the requirements of section 170.12(b) shall not be required to replace or modify its existing internal audit function. A claims auditor under section 170.12(c) shall not be required to be a resident of the school district or BOCES supervisory district. A school district or BOCES may delegate the auditing of claims to an individual through the use of school district or BOCES employees (where not otherwise prohibited), an inter-municipal cooperative agreement, shared services to the extent authorized by Education Law section 1950 or independent contractors. Audit committees established pursuant to section 170.12(d) may consist of either: (a) a committee of the trustees or board members; (b) a committee of the whole; or (c) an advisory committee, which may be composed entirely of persons other than trustees or board members, if advisable to provide accounting and auditing experience.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department’s Rural Education Advisory Committee that includes representatives of school districts in rural areas. Copies of the proposed amendments have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. School districts, BOCES, and the public were provided the opportunity to provide comments on the proposed regulations. The draft regulations were available on the Department’s website and comments were requested from various educational organizations and the Office of the State Comptroller. Over 20 written comments and numerous verbal comments were received for consideration and many were incorporated into the proposed rule.

Job Impact Statement

The proposed amendment is necessary to implement Chapter 263 of the Laws of 2005, relating to school district financial accountability. The proposed amendment applies to school districts and boards of cooperative educational services (BOCES), and establishes criteria, consistent with Chapter 263, for training of school district and BOCES board members in financial oversight, accountability and fiduciary responsibilities; the establishment of an internal audit function; the establishment of a claims auditor; the establishment of audit committees; and for an annual audit, including a requirement that a competitive request for proposal (RFP) process be used when contracting for the annual audit.

The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Standing Committees on the Board of Regents

I.D. No. EDU-11-06-00003-P

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

Proposed action: Amendment of section 3.2 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided)

Subject: Standing committees of the Board of Regents.

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

Text of proposed rule: 1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective June 15, 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 June 15, 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; and*

(vi) *monitors implementation of board priorities.*

Text of proposed 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, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 474-6400

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 gives the Board of Regents broad authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to effect a change in the committee structure of the Board of Regents to assist the Board in meeting its statutory responsibility to determine the educational policies of the State and to carry out the laws and policies of the State relating to education.

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; and

(vi) monitors implementation of board priorities.

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment relates to the internal organization of the Board of Regents and merely conforms the Rules of the Board of Regents to make a change in the committee structure of the Board of Regents, and will not impose any costs on State and local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives to be considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of the State of New York and there are no federal standards governing such.

10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

Regulatory Flexibility Analysis

The proposed amendment 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

The proposed amendment 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 of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates 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 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 has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements for Certification as a Nurse Practitioner

I.D. No. EDU-11-06-00004-P

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

Proposed action: Amendment of section 64.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6504 (not subdivided), 6506(1); 6507(2)(a) and (3)(a); 6902(3)(a) and 6910(1)(c) and (5)

Subject: Requirements for certification as a nurse practitioner.

Purpose: To strengthen the education requirements for certified nurse practitioners to be certified in an additional specialty area of practice.

Text of proposed rule: 1. Subparagraph (iii) of paragraph (2) of subdivision (c) of section 64.4 of the Regulations of the Commissioner of Education is amended, effective June 15, 2006, as follows:

(iii) satisfactory completion of a nationally recognized examination acceptable for licensure in New York State as a [physician's] *physician* assistant or [for certification] as a [nurse] *midwife*.

2. Subdivision (d) of section 64.4 of the Regulations of the Commissioner of Education is amended effective June 15, 2006 as follows:

(d) Alternative criteria for certification in additional specialty areas of practice. (1) *The alternative requirements of this subdivision are only available to applicants who apply to the department for certification in the additional specialty area of practice on or before August 15, 2006 and who meet all requirements for certification under this subdivision by September 15, 2006. These alternative requirements for certification shall not be available to applicants who do not meet these conditions and shall not be available to applicants who apply for certification after August 15, 2006.*

[(1)] (2) . . .

[(2)] (3) . . .

3. Subdivision (f) of section 64.4 of the Regulations of the Commissioner of Education is relettered subdivision (e), effective June 15, 2006.

Text of proposed 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: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

Paragraph (a) of subdivision (3) of section 6902 of the Education Law defines nurse practitioner practice, authorizing such practice within a specialty area.

Paragraph (c) of subdivision (1) of section 6910 of the Education Law authorizes the State Education Department to establish education requirements for certification as a nurse practitioner through registered programs or their equivalent or alternative criteria established in Commissioner's Regulations.

Subdivision (5) of section 6910 of the Education Law authorizes the Commissioner to promulgate regulations concerning qualifying requirements for the certification of nurse practitioners.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes in that it will establish education requirements for certified nurse practitioners to be certified in additional specialty areas of practice.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to strengthen the education requirements for certified nurse practitioners to be certified in an additional specialty area of practice. Nurse practitioners are certified in a particular specialty area of practice. The amendment would phase out alternative criteria for certification in an additional specialty area of practice and require candidates to complete the standard requirements for certification, which include completion of a registered master's degree or advanced certificate program in the area of specialty, or its equivalent; or certification as a nurse practitioner in the specialty area by a national certifying body acceptable to the Department. The State Board for Nursing has approved this change.

The proposed amendment would close what was intended to be a limited window of opportunity for nurse practitioners to qualify for certification in additional specialty areas through completion of 60 hours of continuing education in the specialty area and 1,000 hours of clinical practice in the specialty. These requirements were designed primarily to

provide a route to certification in another specialty area of practice for certified nurse practitioners who were employed in the specialty area of practice before the effective date of this licensed profession. The objective was to provide experienced nurse practitioners a route to certification in another specialty area without requiring them to return to college to complete a master's degree or advanced certificate program in the specialty area. The Department believes that this option is no longer needed and that this change will strengthen the educational preparation of certified nurse practitioners.

At the present time, there are significant educational opportunities in New York State for preparation in this field at the graduate level. In New York State, there are 94 registered master's degree or advanced certificate programs offered at 31 colleges and universities.

The proposed amendment also makes several minor technical changes in the regulation, correcting the terminology for the titles "physician assistant" and "midwife" and a lettering error.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional cost to State government over and above the current costs imposed by statute.

(b) Costs to local government: None.

(c) Costs to private regulated parties: Certified nurse practitioners seeking certification in an additional specialty area will be required to complete a master's degree or an advanced certificate program in that specialty area. The Department anticipates that almost all will already have a master's degree in their initial area of specialty. They will have to complete about 20 semester hours of graduate course work in the area of the new specialty area, to supplement the graduate course work they have already completed for their first master's degree. The nurse practitioner will have to bear the costs of this additional education. The average cost of one semester hour in a master's degree or advanced certificate nurse practitioner program is between \$350 a credit at a public university and \$1,000 at a private university. Therefore, the State Education Department estimates that the average cost for the second specialty area will be between \$7,000 (\$350 X 20 semester hours) and \$20,000 (\$1,000 X 20 semester hours). However, not all of these costs are additional. The alternative requirement that is being phased out had costs. It required nurse practitioners to complete 60 continuing education hours at an estimated cost of between \$1,400 and \$4,000.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendment does not impose costs on the State Education Department. In fact, the amendment will reduce administrative costs at the State Education Department. The review of applications for nurse practitioners seeking an additional specialty area of practice under the alternative requirements is time and labor intensive. The Department's review of applications based upon completion of registered programs or their equivalent is less costly.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the certification requirements for nurse practitioners in an additional specialty area of practice and does not impose any program, service or duty on local government.

6. PAPERWORK:

The amendment does not impose any additional paperwork requirements. Applicants for certification as a nurse practitioner in an additional area of practice will continue to have to submit an application to the State Education Department.

7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of the amendment, certification of nurse practitioners in an additional specialty area. Therefore, the proposed amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

The State Education Department considered repealing the provision immediately upon the effective date of the regulation, but decided to phase out the alternative requirements instead. This permits applicants who are in the process of meeting the alternative requirements to have a fair opportunity to complete them.

9. FEDERAL STANDARDS:

There are no specific Federal standards establishing requirements for certification of nurse practitioners.

10. COMPLIANCE SCHEDULE:

The proposed amendment contains a provision that phases out the alternative requirements. Certified nurse practitioners who apply for certification in an additional specialty area may meet the alternative requirements, provided that they apply to the Department for certification by

August 15, 2006 and meet all of the alternative requirements by September 15, 2006.

Regulatory Flexibility Analysis

The proposed amendment makes a change in the certification requirements affecting individual certified nurse practitioners who seek certification in an additional specialty area of practice. It would phase out alternative requirements for such additional certification and require candidates to complete the standard requirements, including the completion of a master's degree or advanced certificate program in the specialty area. The proposed amendment concerns the education requirements that individuals who are certified nurse practitioners must meet to obtain certification in an additional specialty area of practice. The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping or other compliance requirements on small business or local governments, or have an adverse economic effect on them.

Because it is evident from the nature of the proposed amendment 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

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The rule will affect certified nurse practitioners who apply for certification in an additional specialty area of practice, under alternative requirements prescribed in Commissioner's Regulations, including those who live in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Each year, about 40 certified nurse practitioners apply for certification in an additional specialty area of practice under the alternative requirements. The Department estimates that each year about 5 of the 40 come from a rural county of New York State, based on the percentage of certified nurse practitioners who live in such rural counties (15 percent).

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

The proposed amendment makes a change in the certification requirements for nurse practitioners who apply for certification in additional specialty areas of practice. Certified nurse practitioners are certified in a particular specialty area of practice. The amendment would phase out alternative criteria for certification in an additional specialty area of practice and require candidates to complete the standard requirements for certification.

The current alternative requirement permits the certified nurse practitioner to achieve certification in an additional area of specialty practice through 60 hours of continuing education obtained in the specialty area of practice and 1,000 hours of clinical practice in that specialty. The amendment would phase out this alternative requirement and require all candidates to complete a registered master's degree or advanced certificate program in the area of specialty, or its equivalent; or achieve certification as a nurse practitioner in the specialty area by a national certifying body acceptable to the Department.

The proposed amendment also makes several minor technical changes in the regulation, correcting the terminology for the titles "physician assistant" and "midwife" and a lettering error.

The proposed amendment does not impose a need for professional services and does not establish additional reporting or recordkeeping requirements on applicants for certification in additional specialty areas of practice, including those in rural areas of New York State. Applicants for certification as a nurse practitioner in an additional area of practice will continue to have to submit an application to the State Education Department.

3. COSTS:

Certified nurse practitioners seeking certification in an additional specialty area will be required to complete a master's degree or advanced certificate program in that specialty area. The Department expects that almost all such candidates will already have completed a master's degree program in their initial area of specialty and will have to complete about 20 semester hours of additional graduate course work in the area of the new specialty for the new master's degree or advanced certificate. The nurse practitioner will have to bear the costs of this additional education. The average cost of one semester hour in a master's degree or advanced certificate nurse practitioner program is between \$350 a credit at a public university and \$1,000 at a private university. Therefore, the State Education Department estimates that the average cost for the second specialty area will be between \$7,000 (\$350 × 20 semester hours) and \$20,000 (\$1,000 × 20 semester hours). However, not all of these costs are addi-

tional. The alternative requirement that is being phased out had costs. It required nurse practitioners to complete 60 continuing education hours at an estimated cost of between \$1,400 and \$4,000.

4. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendment is to strengthen the education requirements for certified nurse practitioners to be certified in another specialty area of practice. The amendment would phase out alternative criteria for certification in an additional specialty area of practice and require candidates to complete the standard requirements for certification. The amendment makes no exception for individuals who live or work in rural areas of New York State. The Department has determined a uniform requirement should apply to improve the educational preparation for all certified nurse practitioners who seek certification in an additional specialty area. Because of the nature of the proposal, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Board for Nursing approved this change in the regulation. The Board includes members who live and work in rural areas of New York State. The State Education Department solicited comments from all colleges and universities in New York State that offer master's degree programs in nursing, including those located in rural areas of the State. Also, the Department consulted with professional associations that represent certified nurse practitioners and registered professional nurses in all parts of New York State, including rural areas.

Job Impact Statement

The purpose of the proposed amendment is to strengthen the education requirements that certified nurse practitioners must meet to be certified in an additional specialty area of practice. The amendment would phase out alternative criteria for certification in an additional specialty area and require candidates to complete the standard requirements for certification, which include completion of a registered master's degree or advanced certificate program in the area of specialty, or its equivalent; or certification as a nurse practitioner in the specialty area by a national certifying body acceptable to the Department.

This change concerns the education that nurse practitioners need to complete to qualify for certification in an additional specialty area of practice. The amendment does not affect the number of jobs or the number of employment opportunities in this field, or any other field. 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Learning Requirements for Injury Prevention and Life Safety Education

I.D. No. EDU-11-06-00005-P

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

Proposed action: Amendment of section 100.2(c)(5) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided), 808(1) and 3204(3)

Subject: State learning requirements for injury prevention and life safety education.

Purpose: To establish requirements for instruction in injury prevention and life safety education consistent with chapter 242 of the Laws of 2005.

Text of proposed rule: Paragraph (5) of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective June 15, 2006, as follows:

(5) for all students, instruction in fire drills and in fire and arson prevention, *injury prevention and life safety education*, as required by sections 807 and 808 of the Education Law. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, *or a life safety emergency*;

Text of proposed 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: Jean C. Stevens, Interim Deputy Commissioner, Education Department, Office of Elementary, Middle, Secondary and Continuing Education, Rm. 875, Education Building Annex, Albany, NY 12234, (518) 474-5915

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

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

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

Education Law section 808, as amended by Chapter 242 of the Laws of 2005, directs the Commissioner to provide and prescribe a course of instruction in injury prevention and life safety education.

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

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to conform the Commissioner's Regulations to Chapter 242 of the Laws of 2005, relating to the provision of instruction in injury prevention and life safety education.

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 242 of the Laws of 2005, by requiring the addition of a course of instruction in injury prevention and life safety education to existing curricula. Adolescence is a period marked by an increased likelihood of risk taking and poor decision-making regarding personal safety and welfare. Adolescents require information regarding risk aversion and safety procedures that will limit the potential for serious injury. The added course content will assist adolescents to understand how to minimize the risk of injury and respond appropriately if facing a life-threatening situation.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed amendment merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005 and does not impose any additional costs on school districts and boards of cooperative educational services (BOCES) beyond those imposed by the statute. There may be minimal costs to school districts and BOCES associated with the selection and purchase of supplies required to integrate the additional course content into existing curricula.

(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 merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005 and does not impose any additional program, service, duty or responsibility on school districts, BOCES or other local governments.

Consistent with Chapter 242 of the laws of 2005, the proposed amendment requires the addition of a course of instruction in injury prevention and life safety education to existing curricula. School districts and BOCES will need to ensure that curriculum and instruction include the additional course content.

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards in this area.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to the provision of instruction in injury prevention and life safety education by school districts and boards of cooperative educational services (BOCES), and will not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

EFFECT OF RULE:

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

COMPLIANCE REQUIREMENTS:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005 and does not impose any additional reporting, recordkeeping or any other compliance requirements on local governments. The proposed amendment requires the addition of courses of instruction in injury prevention and life safety education to existing curricula, consistent with Chapter 242 of the Laws of 2005. School districts and boards of cooperative educational services will need to ensure that curriculum and instruction in are modified to include the additional content.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005 and does not impose any additional costs beyond those imposed by the statute.

There may be minimal costs to school districts and BOCES associated with the selection and purchase of supplies required to integrate the additional course content into existing curricula.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005, and does not impose any additional compliance requirements or costs on school districts and BOCES beyond those imposed by the statute. Consistent with Chapter 242 of the Laws of 2005, the proposed amendment requires the addition of a course of instruction in injury prevention and life safety education to existing curricula. Since this requirement is statutorily imposed, it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt school districts and BOCES from coverage by the rule.

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 merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005 and does not impose any additional compliance requirements on rural areas. The proposed amendment requires the addition of courses of instruction in injury prevention and life safety education into existing curricula consistent with Chapter 242 of the Laws of 2005. School districts and BOCES will need to ensure that curriculum and instruction include the newly required material. The amendment does not require parties to hire professional services to comply.

COMPLIANCE COSTS:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005 and does not impose any additional costs beyond those imposed by the statute. There may be minimal costs on school districts or BOCES associated with the selection and purchase of supplies required to integrate the new course content into existing curricula.

MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 242 of the Laws of 2005, and does not impose any additional compliance requirements or costs on school districts and BOCES beyond those imposed by the statute. Consistent with Chapter 242 of the Laws of 2005, the proposed amendment requires the addition of a course of instruction in injury prevention and life safety education to existing curricula. Since this requirement is statutorily imposed, it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt school districts and BOCES in rural areas from coverage by the rule.

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 provision of instruction in injury prevention and life safety education by school districts and boards of cooperative educational services (BOCES) and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no adverse impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Graduation and Diploma Requirements for Mathematics

I.D. No. EDU-11-06-00006-P

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

Proposed action: Amendment of section 100.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: State graduation and diploma requirements for mathematics.

Purpose: To revise mathematics graduation and diploma requirements consistent with policy adopted by the New York State Board of Regents.

Text of proposed rule: 1. Paragraph (3) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 15, 2006, as follows:

(3) Students first entering grade nine in the 2001-2002 school year, but prior to the 2008-2009 school year, shall have earned at least 22 units of credit including two credits in physical education to receive either a Regents or local high school diploma. Students first entering grade nine in the 2008-2009 school year and thereafter shall have earned at least 22 units of credit including two credits in physical education to receive a Regents diploma. Such units of credit shall incorporate the commencement level of the State learning standards in: English; social studies; mathematics, science, technology; the arts (including visual arts, music, dance and theatre); languages other than English; health, physical education, family and consumer sciences; and career development and occupational studies. Such units of credit shall include:

- (i) English, four units of *commencement level* credit;
- (ii) . . .
- (iii) . . .

(iv) mathematics, three units of *credit* of mathematics, which shall be at a more advanced level than grade eight, [and] shall meet commencement-level learning standards as determined by the commissioner, *provided that no more than two credits shall be earned for any Integrated Algebra, Geometry, or Algebra 2/Trigonometry commencement level mathematics course;*

(v) . . .

(vi) . . .

2. Paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 15, 2006, as follows:

(5) State assessment system. (i) Except as otherwise provided in subparagraphs (ii), (iii), and (iv) of this paragraph, all students shall demonstrate attainment of the New York State learning standards:

(a) . . .

(b) Mathematics:

(1) for students who first enter grade nine prior to September 1997, by passing either the Regents competency test in mathematics, or a Regents examination in mathematics; or

(2) for students who first enter grade nine in September 1997 and thereafter, by passing a *commencement level* Regents examination in mathematics. For purposes of a Regents endorsed diploma a score of 65 shall be considered passing. For a local diploma a score of 55-64, as determined by the school, also may be considered passing up through the 2007-2008 school year; or

(3) . . .

(4) . . .

3. Paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 15, 2006, as follows:

(7) Types of diplomas. (i) . . .

(ii) . . .

(iii) . . .

(iv) Earning a Regents diploma. Students first entering grade nine in 2001 and thereafter shall meet the commencement level New York State learning standards by successfully completing 22 units of credit and five New York State assessments distributed as specified in clauses (a) through (k) of this subparagraph. After passing the required New York State assessment or approved alternative in mathematics, science, and English language arts, the remaining units of credit required in that discipline may be in specialized courses. A specialized course is a course that meets the requirements of a unit of credit as defined in section 100.1(a) of this Part and the New York State commencement *level* learning standards as established by the commissioner. A specialized course develops the subject in greater depth and/or breadth and/or may be interdisciplinary. Successful completion of one unit of study in an interdisciplinary specialized course may be awarded only one unit of credit but may be used to meet the distribution requirements in more than one subject. In a public high school, an interdisciplinary specialized course shall be taught by a teacher certified in at least one of the subjects.

(a) . . .

(b) . . .

(c) Mathematics, three units of credit and [the] a *commencement level* Regents examination in mathematics designated by the commissioner or an approved alternative pursuant to section 100.2(f) of this Part. [Students must pass either the Regents examination titled Mathematics A, or until January 2002, both Regents examinations titled Course I and Course II or both Course I and Mathematics A.]

(d) . . .

(e) . . .

(f) . . .

(g) . . .

(h) . . .

(i) . . .

(j) . . .

(k) . . .

(v) Earning a Regents diploma with advanced designation. To earn a Regents diploma with an advanced designation a student must complete, in addition to the requirements for a Regents diploma:

(a) additional Regents examinations in mathematics as determined by the commissioner or approved alternatives pursuant to section 100.2(f) of this Part. Students *entering grade 9 prior to September 2009* must pass [the] two of the three *commencement level* Regents examinations in mathematics titled Mathematics A, [and] Mathematics B, or *Algebra 2/Trigonometry* [or the three Regents examinations titled Course I,

Course II and Course III or the two Regents examinations titled Mathematics A and Course III]. *Students entering grade 9 in September 2009 and thereafter must pass all three commencement level Regents examinations in mathematics titled Mathematics A or Integrated Algebra, Geometry, and Algebra 2/Trigonometry.*

- (b) . . .
- (c) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .
- (ix) . . .

(x) *Students who first enter grade nine in September 2009 and thereafter who complete all coursework and testing requirements for the Regents diploma with advanced designation in mathematics and/or science, and who pass, with a score of 85 or better, three commencement level Regents examinations in mathematics and/or three commencement level Regents examinations in science, will earn a Regents diploma with advanced designation, with an annotation on the diploma that denotes mastery in mathematics and/or science, as applicable.*

Text of proposed 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: Jean C. Stevens, Interim Deputy Commissioner, Education Department, Office of Elementary, Middle, Secondary and Continuing Education, Rm. 875, Education Building Annex, Albany, NY 12234, (518) 474-5915

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

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

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

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

The proposed amendment will revise the mathematics graduation and diploma requirements first adopted by the Board of Regents in July 1999, and subsequently revised in November 2003, to help ensure that all stu-

dents in the State's public schools have the mathematics skills, knowledge and understandings they need to succeed in the new century. In March 2005, the Board of Regents adopted revised high school performance indicators for mathematics courses in Algebra, Geometry, and Algebra 2/Trigonometry. The proposed changes to section 100.5 of the Regulations of the Commissioner of Education are now necessary to implement revisions to mathematics graduation and diploma requirements adopted by the Board of Regents in October 2005.

Under current regulations, students must earn three units of credit in mathematics to meet the graduation and diploma requirements. In October 2005, the Board of Regents revised the commencement level mathematics graduation and diploma requirements to align with the revised high school performance indicators for the following three mathematics courses: Integrated Algebra, Geometry, and Algebra 2/ Trigonometry. The mathematics Regents examinations will be revised to reflect the change in the State learning standard for mathematics and the commencement level performance indicators for these courses.

The proposed amendment also limits to two the number of units of credit earned for any of these three commencement level mathematics courses (Integrated Algebra, Geometry, and Algebra 2/ Trigonometry). It clarifies that students entering grade 9 prior to September 2009 must pass two of the three commencement level Regents examinations titled Mathematics A, Mathematics B or Algebra 2/Trigonometry to meet State graduation and diploma requirements in mathematics, and that students who enter grade 9 in September 2009 and thereafter must pass all three commencement level Regents examinations titled Mathematics A or Integrated Algebra, Geometry, and Algebra 2/Trigonometry to meet State graduation and diploma requirements. The proposed amendment also provides for students who first enter grade 9 in September 2009 and thereafter, who complete all coursework and testing requirements for the Regents diploma with advanced designation in mathematics and/or science, and who pass, with a score of 85 or better, three commencement level Regents examinations in science, an annotation on their Regents diploma with advanced designation that denotes mastery in mathematics or science, as applicable.

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 is necessary to implement policy adopted by the Board of Regents at their October 2005 meeting. The proposed amendment revises the mathematics graduation and diploma requirements for students attending the public schools and does not impose any additional compliance requirements on school districts or charter schools. The proposed amendment revises the current mathematics high school graduation and diploma requirements by establishing three commencement level mathematics courses in Integrated Algebra, Geometry, and Algebra 2/Trigonometry for which new mathematics Regents examinations will be aligned and which students must pass to meet State graduation and diploma requirements.

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

The proposed amendment is necessary to implement policy adopted by the Board of Regents at their October 2005 meeting. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment will revise the mathematics graduation and diploma requirements for students attending the public schools, consistent with policy adopted by the Board of Regents in October 2005. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small busi-

nesses. 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 rule applies to each of the 708 public school districts in the State, and to charter schools that are authorized to issue local or Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are only 2 charter schools authorized to issue local or Regents diplomas.

COMPLIANCE REQUIREMENTS:

The proposed amendment will revise the graduation and diploma requirements first adopted by the Board of Regents in July 1999, and subsequently revised in November 2003, to help ensure that all students in the State's public schools have the skills, knowledge and understandings they need to succeed in the next century. The proposed changes are necessary to implement revisions to policy adopted by the Board of Regents in October 2005.

Under current regulations, students must earn three units of credit in mathematics to meet the graduation and diploma requirements. In October 2005, the Board of Regents revised the commencement level mathematics graduation and diploma requirements to align with the revised high school performance indicators for the following three mathematics courses: Integrated Algebra, Geometry, and Algebra 2/Trigonometry. The mathematics Regents examinations will be revised to reflect the change in the State learning standard for mathematics and the commencement level performance indicators for these courses.

The proposed amendment also limits to two the number of units of credit earned for any of these three commencement level mathematics courses (Integrated Algebra, Geometry, and Algebra 2/Trigonometry). It clarifies that students entering grade 9 prior to September 2009 must pass two of the three commencement level Regents examinations titled Mathematics A, Mathematics B or Algebra 2/Trigonometry to meet State graduation and diploma requirements in mathematics, and that students who enter grade 9 in September 2009 and thereafter must pass all three commencement level Regents examinations titled Mathematics A or Integrated Algebra, Geometry, and Algebra 2/Trigonometry to meet State graduation and diploma requirements. The proposed amendment also provides for students who first enter grade 9 in September 2009 and thereafter, who complete all coursework and testing requirements for the Regents diploma with advanced designation in mathematics and/or science, and who pass, with a score of 85 or better, three commencement level Regents examinations in mathematics and/or three commencement level Regents examinations in science, an annotation on their Regents diploma with advanced designation that denotes mastery in mathematics or science, as applicable.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs to school districts or charter schools.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or new technological requirements on school districts or charter schools.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents at their October 2005 meeting. The proposed amendment revises the mathematics graduation and diploma requirements for students attending the public schools and does not impose any additional compliance requirements or costs on school districts or charter schools. Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue local or Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the rule.

The proposed amendment aligns with policy adopted by the Board of Regents in follow-up to recommendations received from a Mathematics Standards Committee charged to review the mathematics learning standards and performance indicators in grades pre-kindergarten through high school. The Committee was comprised of school administrators, mathematics teachers, mathematics experts, and representatives of the higher education and business communities. As part of its work, comments were solicited from the field by the Committee on its recommendations. The

Committee reviewed the more than 2,000 comments received and it revised, where appropriate, the final recommendations that were submitted to the Board of Regents for consideration in revising policy on mathematics graduation and diploma requirements.

LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas or local diplomas. At present, there are no such charter schools located in rural areas.

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

The proposed amendment will revise the graduation and diploma requirements first adopted by the Board of Regents in July 1999, and subsequently revised in November 2003, to help ensure that all students in the State's public schools have the skills, knowledge and understandings they need to succeed in the next century. The proposed changes are necessary to implement revisions to policy adopted by the Board of Regents in October 2005.

Under current regulations, students must earn three units of credit in mathematics to meet the graduation and diploma requirements. In October 2005, the Board of Regents revised the commencement level mathematics graduation and diploma requirements to align with the revised high school performance indicators for the following three mathematics courses: Integrated Algebra, Geometry, and Algebra 2/Trigonometry. The mathematics Regents examinations will be revised to reflect the change in the State learning standard for mathematics and the commencement level performance indicators for these courses.

The proposed amendment also limits to two the number of units of credit earned for any of these three commencement level mathematics courses (Integrated Algebra, Geometry, and Algebra 2/Trigonometry). It clarifies that students entering grade 9 prior to September 2009 must pass two of the three commencement level Regents examinations titled Mathematics A, Mathematics B or Algebra 2/Trigonometry to meet State graduation and diploma requirements in mathematics, and that students who enter grade 9 in September 2009 and thereafter must pass all three commencement level Regents examinations titled Mathematics A or Integrated Algebra, Geometry, and Algebra 2/Trigonometry to meet State graduation and diploma requirements. The proposed amendment also provides for students who first enter grade 9 in September 2009 and thereafter, who complete all coursework and testing requirements for the Regents diploma with advanced designation in mathematics and/or science, and who pass, with a score of 85 or better, three commencement level Regents examinations in mathematics and/or three commencement level Regents examinations in science, an annotation on their Regents diploma with advanced designation that denotes mastery in mathematics or science, as applicable.

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

COMPLIANCE COSTS:

The proposed amendment does not impose any additional compliance costs on school districts.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents at their October 2005 meeting. The proposed amendment revises the mathematics graduation and diploma requirements for students attending the public schools and does not impose any additional compliance requirements or costs on school districts. 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 entities in rural areas, or to exempt them from the provisions of the proposed amendment.

The proposed amendment aligns with policy adopted by the Board of Regents in follow-up to recommendations received from a Mathematics Standards Committee charged to review the mathematics learning standards and performance indicators in grades prekindergarten through high school. The Committee was comprised of school administrators, mathematics teachers, mathematics experts, and representatives of the higher education and business communities. As part of its work, comments were

solicited from the field by the Committee on its recommendations. The Committee reviewed the more than 2,000 comments received and it revised, where appropriate, the final recommendations that were submitted to the Board of Regents for consideration in revising policy on mathematics graduation and diploma requirements.

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 revises mathematics graduation and diploma requirements consistent with policy adopted by the New York State Board of Regents to help ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

State Aid to School Districts

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

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

Proposed action: Amendment of section 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 3602(1)(d)

Subject: State aid to school districts.

Purpose: 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 proposed rule: Subdivision (b) of section 175.5 of the Regulations of the Commissioner of Education is amended, effective June 15, 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.

Text of proposed 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: Jean C. Stevens, Interim Deputy Commissioner, Education Department, Office of Elementary, Middle, Secondary and Continuing Education, Rm. 875, Education Building Annex, Albany, NY 12234, (518) 474-5915

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the 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, recordkeeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local government:

EFFECT OF RULE:

The proposed amendment applies to all 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Harvest and Possession of Marine Finfish in New York Waters

I.D. No. ENV-46-05-00008-A

Filing No. 252

Filing date: Feb. 28, 2006

Effective date: March 15, 2006

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1303, 13-0105, 13-0335, 13-0338, 13-0339-a, 13-0340, 13-0340-b, 13-0340-c, 13-0340-e, 13-0340-f, 13-0342 and 13-0347

Subject: Harvest and possession of marine finfish in New York waters.

Purpose: To manage the harvest and possession of marine finfish to conform with fishery management plans and Federal regulations.

Substance of final rule: The text of this proposed rule making, which amends 6 NYCRR Part 40, "Marine Fish," includes the following regulatory changes: revision of the existing commercial trip limit definition; a requirement that Marine District Party and Charter Boat License holders complete and file logbooks reporting their catch and effort; a requirement that all Commercial Foodfish license holders display a decal while fishing; a decrease in the recreational minimum size limits for haddock and for Atlantic cod; an increase in the minimum size limit, a decrease in possession limit, and a shortened fishing season for the recreational winter flounder fishery; an increase in the recreational black sea bass fishing season; new recreational and commercial minimum size and possession limits and fishing season for oyster toadfish; a revised Federal Register citation for shark regulations incorporated by reference; revisions to existing summer flounder, bluefish, black sea bass and spiny dogfish commercial regulations to eliminate duplicate text, to reflect changes to quota periods, and to correct internal text references and allow flexibility for quota management; elimination of the commercial winter flounder fyke fishery registry and reporting requirements; an increase in the minimum mesh size requirement for winter flounder and scup trawls; and a change in the commercial striped bass limit for trawl gear.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 40.1(c)(3)(i), (ii) and 40.5(c)(2).

Text of rule and any required statements and analyses may be obtained from: Alice Weber, Department of Environmental Conservation, 205 N. Bellemeade Rd., East Setauket, NY 11733, (631) 444-0435, e-mail: amweber@gw.dec.state.ny.us

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

Non-substantive changes were made by the Department to the text of the final rule as adopted. These changes were added in an effort to clarify certain wording of the rule, and to correct typographical errors. The substance of the rule remains unchanged. Therefore, the Department of Environmental Conservation has determined that it is not necessary to revise the previously published RIS, RFA, RAFA, and JIS.

Assessment of Public Comment

Thirty three written comments were received during the public comment period for the proposed rule making. Those comments are summarized below, followed by the Department's response:

Reporting and observer requirements for marine party and charter boat license holders:

Comments: The Department received nine comments on the proposed Party and Charter Boat reporting and observer requirements. Seven were submitted by individuals, one was from a trade organization representing the interests of the marine for-hire boat industry, and one came from a coalition of environmental organizations.

The boat industry representative and four individuals who were owners or operators of party or charter vessels objected to the reporting requirements because they do not believe that the logbook data will be used in any meaningful way, and questioned whether New York could require a form to be filed with a federal agency.

They also indicated that while they do not object to licensed vessels carrying observers, they did request an exemption for vessels licensed to carry only six passengers because the addition of an observer would be a safety risk, a violation of federal law, and an economic hardship on the operators of such vessels. One person objected to the observer program and was concerned about having to pay for the observer.

The environmental coalition and two individuals supported both the reporting and observer requirements, citing the need for more accurate information on harvest data, stock status, and bycatch, as well as consistency with federal requirements. Additionally, the coalition and one individual specifically supported the penalty and permit revocation provisions for failure to comply with the reporting and observer requirements. One individual recommended that the regulations be revised to prohibit personnel on for-hire vessels from interfering with observer access to vessel patrons. The environmental coalition recommended that the regulations be amended to include equivalent on-board observer regulations for commercial fishing vessels.

Department Response: Environmental Conservation Law 13-0342 authorizes the Department to adopt regulations to require the reporting of catch and effort data by party and charter boat license holders for the purpose of improving the Department's ability to manage marine fishery resources. This proposal would require all marine party and charter license holders to complete and file Vessel Trip Reports (VTRs), summarizing their catch, effort and harvest, when directed to do so in writing by the Department. The Department expects to impose such a requirement in the future when a decision has been made to replace current data collection programs (see below) with a VTR requirement. The VTR is a standardized fisheries data collection form that is produced, distributed and compiled by the federal government at no cost to New York State or to fishermen. All of New York's commercial foodfish license holders have been required to complete and submit this form since 2002. The VTR is a very cost effective means of collecting detailed harvest data reported by fishermen. At present, only some of New York's party and charter boat operators (those who hold federal permits) are required to complete and submit VTRs (a condition of their federal permit). The adoption of this rule will provide the Department with the ability to compile a complete census of catch and effort data from all of New York's party and charter boats, providing more complete and accurate information on harvest data, stock status, and bycatch, at virtually no cost to the fishermen or to the State.

The Department notes the comments that questioned whether New York could require a form to be filed with a federal agency. The VTR filing provision of the rule is intended to enable the Department to maintain consistency with procedures adopted by the cooperative state and federal fisheries statistics program. The Department wishes to clarify that this is a state - not federal - filing requirement. Accordingly, the text of the rule has been modified to address this concern.

The proposed rule would also make it mandatory for marine and coastal district party and charter boat licensees to comply with the data collection procedures employed by the "For-Hire Survey," which is a cooperative federal and state program currently being conducted on the east coast of the United States. Those procedures include three components: (1) effort data derived from telephone calls to captains of permitted vessels; (2) catch data derived from angler intercepts at the conclusion of

party/charter fishing trips; (3) sea sampling conducted by placing observers on large charter and party boats to obtain data on released fish and catch information that can be used to cross check against the intercept data.

The proposed rule makes it mandatory for license holders to carry on-board observers and to report catch and effort information when requested to do so by the Department, the federal fisheries service or the authorized agent. Federal and state observer programs, which involve onboard data collection agents and telephone and dockside surveys, are important components of a fisheries data collection program. Personnel onboard fishing vessels can, through direct observation and measurements, provide accurate information on individual catch rates, biological data, and, most importantly, discard and bycatch data that is unavailable through any other means. Since participation in past survey and observer programs has been voluntary, cooperation with these types of surveys is unpredictable and tends to vary from year to year and from area to area, complicating survey design and implementation, and resulting in annual catch and effort estimates that are biased or highly variable. The proposed rule will enable the Department and its authorized representatives to collect accurate data, improving the Department's ability to manage marine fishery resources.

The Department acknowledges the comments concerning the effect that on-board observers would have on safety and efficiency of operations for small charter boats. The For-Hire Survey recognizes these concerns and does not call for observers on small charter boats.

The Department is adopting the proposed changes relating to the reporting and observer requirements for party and charter boat license holders.

Commercial foodfish license decal:

Comments: The Department received two written comments on the commercial foodfish license decal requirement. One individual objected to the proposed decal and suggested that the size and location of the proposed decal would make it difficult to see and would not be helpful in identifying commercial fishery participants. As an alternative, this individual recommended that the state regulations should require commercial license holders to comply with existing federal vessel identification requirements, which he believes would promote consistency of regulations between federal and state permit holders, improve enforcement, and be acceptable to commercial fishermen.

The second comment came from an individual who supports the proposal.

Department response: The decal requirement is necessary to enable law enforcement to visually identify commercial fishing vessels. Decals have been successfully used with party and charter boat license holders, and therefore were selected as an appropriate model for the initial identification of commercial fishing boats.

The Department is adopting the proposed changes relating to the commercial foodfish license decal.

Atlantic cod and haddock:

Comments: One written comment was received expressing concern that regulatory consistency with other states or the federal government should not be the basis for setting New York's fishery management measures, which instead should be based on scientific arguments or precautionary/conservative approaches to management.

Department response: The proposed changes to the minimum size limits for these species are based on the recommendations of the New England Fishery Management Council and on the most recent biological stock assessments for these species.

The Department is adopting the proposed changes relating to Atlantic cod and haddock.

Winter flounder recreational measures:

Comments: The Department received twenty written comments on the recreational winter flounder proposals. Fourteen of these comments were from recreational anglers, four from party and charter boat owners and mates or their representatives, one from a recreational fishing industry trade organization, and one from an environmental organization. Many of the recreational anglers supported the proposed minimum size and bag limits, and opposed the limited open season. Nine of these anglers specifically opposed the closure of the winter flounder season during the month of June, and several were opposed to the Fall closure as well. Many of the anglers opposed to the June closure said they fished primarily in Moriches Bay, and said the June closure would have a significant negative impact on winter flounder fishing. Two recreational fishermen indicated that the regulations do not go far enough in light of the depressed status of winter flounder stocks, and that New York should implement a complete closure of the fishery, or as an alternative, a much lower possession limit (no more than 6) and a very short spring season.

Two party and charter boat operators and the representative of the party and charter boat association provided comments in support of the proposed season. One party and charter boat captain supported the proposed season, but suggested that the size limit be increased to 12½" minimum and the bag limit be reduced to 8 fish per trip. The fishing industry trade association supported the proposed winter flounder regulations. The owner of a fishing station based on Moriches Bay supports the proposed size and possession limits, but opposes the June closure.

The representative of the environmental organization supports the adoption of the winter flounder regulations and suggested more aggressive regulations to rebuild the stocks.

Department response: The Department recognizes that the comments reflect differing preferences for the open season dates. However, the Marine Resources Advisory Council supports the adoption of the April 1 to May 30th open season, as well as the 12 inch minimum size limit and 10 fish possession limit. Therefore, the Department is adopting the proposed changes relating to winter flounder.

Oyster Toadfish:

Comments: The Department received three supportive comments related to these proposed regulations - one from a representative of an environmental organization, one from a local government agency staff member, and one from a recreational angler. The recreational angler suggested that the Department should also consider a moratorium on the recreational harvest of toadfish.

Department response: There is little information on the status of toadfish populations, and there is insufficient data to generate biological reference points. Available landings data show that toadfish landings remain low, and little fishing effort is currently directed at this species. Based on the available information, a harvest moratorium is scientifically unsupported. Therefore, the Department is adopting the proposed changes relating to oyster toadfish.

Winter flounder and scup mesh regulations:

Comments: The Department received one supportive comment relating to the winter flounder minimum mesh, and suggested that the Department should take additional action to restore winter flounder stocks, including consideration of a moratorium or a harvest closure between September 1 through June 30th.

Department response: The proposed changes to the winter flounder and scup mesh regulations are consistent with the mandatory provisions of the Winter Flounder and Scup Fishery Management Plans. These measures will adequately protect undersized scup and winter flounder, minimizing discard mortality.

The Department is adopting the proposed changes relating to the winter flounder and scup mesh regulations.

Striped bass:

Comments: The Department received five comments from recreational anglers, all opposed to the proposed rule. Most indicated a concern that the increased bycatch allowance in the trawl fishery would create an illegal directed fishery for striped bass. As an alternative, several anglers suggested the Department eliminate the bycatch allowance entirely. Another individual suggested that to reduce the likelihood of regulatory discards, the Department consider time and area closures for trawl fishing for those periods when striped bass are abundant.

Department response: The proposed increase in the striped bass trip limit for permitted trawl vessels was based on advice from industry, and is supported by the Marine Resources Advisory Council. The Council concluded that a 21 fish trip limit would be no more likely to cause development of a directed trawl fishery than the current 7 fish trip limit. Consistent with the Council's recommendation, the Department is adopting the proposed changes relating to the bycatch trip limit for striped bass.

Department of Health

NOTICE OF ADOPTION

Regulated Medical Waste

I.D. No. HLT-20-05-00024-A

Filing No. 240

Filing date: Feb. 23, 2006

Effective date: March 15, 2006

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

Action taken: Amendment of Part 70 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1389-bb and 1389-ff

Subject: Regulated medical waste.

Purpose: To update regulated medical waste regulations.

Substance of final rule: Existing Part 70 is rescinded and replaced with a new Part 70 containing five Subparts: 70-1 Applications and Definitions; 70-2 Management of Regulated Medical Waste (RMW); 70-3 Requirements for Autoclaves to Treat Regulated Medical Waste; 70-4 Approval of Alternative Regulated Medical Waste Treatment Systems; and 70-5 Approval Process for Alternative Technologies.

This amendment clarifies terminology; adds flexibility to existing regulatory requirements; and codifies advisories for RMW management previously promulgated in guidance documents, following 1993 statutory amendments. This proposal revises regulatory definitions for RMW, infectious agents and treatment in conformance with the Law; amends container-labeling requirements; and incorporates applicable requirements for transport and disposal of RMW, allowing for increased flexibility in financial management and planning.

Section 70-1.1 specifies that the requirements apply to hospitals, residential health care facilities, and diagnostic and treatment centers and clinical laboratories.

Section 70-1.2 includes new and revised definitions for terms used throughout the Subpart, including "alternative regulated medical waste treatment system," "autoclave," "biologicals," "certificate of treatment," "challenge testing," "clinical laboratory," "culture and stocks," "culture dishes and devices for transferring, inoculating and mixing cultures," "cycle," "decontamination," "destroyed waste," "efficacy testing," "hazardous waste," "household medical waste," "incinerator," "infectious agent," "monitoring," "operating parameters," "operation plan," "parametric control," "primary container," "residence time," "secondary container," "sharp," "solid waste," "sterilize," "universal warning sign," and "validation testing."

Section 70-2.1 stipulates the minimum requirements of a written plan for the management of RMW.

Section 70-2.2 contains requirements and standards for containment and storage of RMW; clarifies requirements for disposal and establishes time frames for storage of primary containers used to discard sharps; clarifies time frame for storage of RMW in patient care areas and clinical laboratories; sets requirements for rooms or areas used to store RMW; sets labeling requirements for secondary containers used to transport untreated RMW off-site for treatment; clarifies decontamination procedures and guidelines for reusing secondary containers; specifies disposal requirements for secondary containers intended for single use; clarifies on-site processing procedures for reusable sharps containers; and describes requirements for transport of RMW within a facility.

Section 70-2.3 specifies treatment methods for RMW; provides disposal requirements for hazardous, chemotherapeutic and radioactive waste; provides requirements for treatment of human tissue(s), or organs and animal body parts; stipulates transport, packaging and treatment requirements for cultures and stocks containing infectious agents; provides provision for sharps destruction and treatment; stipulates requirement for a response plan for handling untreated waste found commingled with solid waste; requires a radiation detection system for a facility to screen incoming waste for the presence of radioactive materials; requires a contingency plan for handling radioactive material found commingled with RMW delivered for treatment at a treatment facility; and clarifies treated RMW disposal options.

Section 70-2.4 describes requirements for transfer of untreated waste for off-site treatment; clarifies that generators of RMW must transfer custody of untreated waste only to an appropriately permitted (by DEC)

hauler; provides exemption if monthly waste generation is under 50 pounds; establishes requirement for use of medical waste tracking forms; clarifies applicability of Federal Department of Transportation requirements to certain cultures and stocks; specifies treatment requirements for solid waste transported with untreated RMW.

Section 70-2.5 contains record-keeping requirements and retention times for the quantity, types, on-site treatment and disposal of RMW.

Section 70-3.1 contains validation testing requirements for autoclaves used to treat RMW; and specifies required elements of protocols for validation testing.

Section 70-3.2 contains requirements for, and minimum elements of, an operational plan for facilities using autoclaves; specifies procedures that must be followed upon autoclave failure to meet operating parameters; contains requirements for monitoring autoclave performance; specifies standards for autoclave performance and for containment of RMW for treatment by autoclaving; and clarifies treatment of autoclaved sharps prior to disposal.

Section 70-3.3 clarifies the minimum operating parameters for treatment of RMW in a gravity-feed autoclave and in a vacuum-displacement autoclave; specifies approval requirements for use of an autoclave at alternative operating parameters.

Section 70-3.4 contains record keeping requirements and time frames for efficacy and validation testing, autoclave training, and documentation of corrective actions, modification of approved operating plans, residence time, pressure and temperature of treated loads.

Section 70-4.1 clarifies criteria for department approval of alternative treatment methods for RMW; and provides approval guidelines and time frames.

Section 70-4.2 establishes requirement for an operational plan approved by the department for each facility using an alternative RMW treatment system; stipulates required elements of the operation plan, including segregation of waste, safety and training plans for personnel handling RMW, emergency procedures, performance monitoring and routine maintenance; describes requirements for modification of the approved operation plan; stipulates the need for an approved plan prior to operation; describes procedures for system failure during operation; specifies monitoring requirements during operation; and stipulates operating personnel training requirements.

Section 70-4.3 clarifies the requirement for a protocol for validation testing; stipulates validation testing requirements to be met prior to placing system in operation.

Section 70-4.4 stipulates the additional recordkeeping requirements and retention times for efficacy and validation testing; for personnel records; for corrective actions; and for plan modifications.

Section 70-5 summarizes the approval process for Alternative Treatment Technologies in New York State.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 70-1.2(a), (i), (l), (n), (q), (r), (u), (aa), (bb), (ff) and (ii); 70-2.2(a), (d), (e), (f), (g), (h), (i) and (m); 70-2.3(b), (c), (e) and (f); 70-2.4(a) and (d); 70-3.1(a) and (b); and 70-5.1(a).

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

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

Although the regulation has been changed since it was published in the State Register on May 18, 2005, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Assessment of Public Comment

The Department of Health believes that the revised Part 70 Environmental Regulations as set forth in this final rule making are those based on a wide range of comments dating to 1988 when the original Part 70 was adopted and subsequent PHL 1389 aa-gg was adopted into law. This law put into place five (5) categories of Regulated Medical Waste (RMW) which are necessary and appropriate to provide adequate protection of the public and provider employees and patients that maybe exposed to blood-borne and other potentially infectious materials and toxic agents. Additionally, consideration was given to the findings of numerous surveillance provider surveys conducted by the Department of Health (DOH), including various reported provider RMW incidents, Federal (2000) and State of New York (2001) needle stick safety and prevention legislation, plus Federal Environmental Protection Agency (EPA) RMW and select agent

regulations. On the development of this final regulation, DOH carefully considered the written and informal comments of these regulations impacting providers and other interested parties given in response to the proposed regulations given in the advanced March 2003 distribution and this final rule making notice May 18, 2005, NYS Register. The final comment period ended July 2, 2005 with written comments being filed on July 1 by the following organizations:

- Information from Scientific LLC (West Sand Lake, NY)
- WNWN International, Inc. (Burlington, Conn.)
- Healthcare Association of New York State (HANYs)
- Stericycle, Inc. (Woonsocket, R.I.)
- Albany Medical Center (Albany, NY)

The Department agreed with the July 2005 comments from the above organizations and made appropriate changes for purposes of clarity and updating citations in the following sections: Definitions (Section 70-1.2); Waste Management Plan (Sec. 70-2.1); Containment and Storage (Sec. 70-2.2); Treatment and Disposal - Cultures and Stocks (Sec. 70-2.3); Transfer of Regulated Medical Waste -Monitoring Autoclaves (Sec. 70-2.4); Operational Requirements (Sec. 70-3.2) and Treatment Technology Approval (70-5.1). The provisions of all referenced sources remain the same.

The Department of Health (DOH) and the Department of Environmental Conservation (DEC) took into consideration, existing NYS DOH/DEC and Federal regulations with those being proposed and disagreed with the interested parties recommendations in the following sections of these regulations: Application (70-1.1). These regulations are restricted to facilities subject to Article 2801 (i.e., Hospitals, nursing homes, residential health care facilities, diagnostic and treatment centers) and clinical laboratories pursuant to Section 571 of the Public Health Law; Definitions (70-1.2 (a) - issue: exclude autoclaves as alternative technology; (I) - issue - efficacy testing . . . do not set criteria for lab testing; (o) - issue: Household medical waste do not clarify applicability to home generated waste; Containment and Storage (70-2.2 (m) - issue: transporting waste; (g), (d) & (e) - issue - regulated medical waste storage temperature; Treatment and Disposal (70-2.3(b)(4) - issue: treatment and disposition; Transfer of Regulated Medical Waste (70-2.4(b) - issue: off-site transport; Validation Testing (70-3.1 - issue: validation testing source & methods of testing not clarified; Generally Accepted Alternative Operating Parameters (70-3.3) - issue - alternative operating parameters not specified; Approval of alternative technology in New York State (70-5.1) - Issues: chemical treatment systems rely on parametric monitoring systems versus using thermal treatment systems which rely on pressure and temperature controls.

In the above areas, DOH felt among other things, these changes have already been addressed in the Regulatory Impact Statement to achieve the New York State Legislative objectives. Some of the changes being proposed would go beyond the scope of DOH authority. These changes would impose new or different RMW definitions not in current regulations, re-define validation testing and operating parameters, establish more stringent labeling criteria, impose new source separation and impose more stringent criteria for autoclaves/alternative technology and removal of DOH review/approval flexibility.

As a final decision to move forth with these regulations, the vast majority of impacted providers has accepted these rules and incorporated these standards into their day-to-day management of RMW operating plans. It has not been the policy of DOH to set rigid regulations regarding waste handling and disposal. However, it is necessary to consider adoption of minimum best practice requirements for containing regulated medical waste. The Department has long determined that regulated medical waste warrants special handling to ensure provider employees, patients and the public is being protected against potential infectious agents and exposure to blood borne pathogens. In that regard, the Commissioner reserves its authority to review new emerging situations and address such on a case-by-case basis. In addition, the DOH recognizes that other authorities, Federal, State and county governments may apply different or more stringent regulations impacting the DOH regulated parties. In addition, the Department of Health is cognitive of the fact that there are various national organizations that have adopted guidance recommendations impacting the management of regulated medical waste in the United States. Therefore, the Department encourages the provider industry to consider these guidelines in ensuring their institutions are current with industry wide recommendations as maybe appropriate. The provider community governing authorities are encouraged to consider alternative technologies and certification organizations (i.e., Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "best practices" in managing RMW within its institutions.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-11-06-00001-E

Filing No. 239

Filing date: Feb. 22, 2006

Effective date: Feb. 22, 2006

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

Action taken: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2, 362-5.3 and 362-5.5 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326, and 4327

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

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program's commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After several years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce Healthy New York premium rates by adjusting the stop loss reimbursement corridors to enable more uninsured businesses and individuals to afford health insurance; lessen complexity in eligibility determination; eliminate the well-child copayment; create a second benefit package; allow members to select a benefit package at annual recertification or when the premium rate changes; establish clear rules with respect to determining employment eligibility; clarify employer contribution requirements for part-time workers, qualify Healthy New York as coverage eligible for a federal tax credit - generally improving the Healthy New York program based upon feedback of affected parties; change the loss ratio standard for Healthy New York contracts from small group to individual; require reports from the insurers pertaining to stop loss reimbursement or loss ratio to be certified.

Substance of emergency rule: The Second Amendment to Regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection also provides that once enrolled in the program, any change in the selection of a benefit package may occur at the time of annual recertification or at anytime the premium rate changes. Notice of this option must be included with any notice of rate change.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions through January 31, 2005 as those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. De-minimus contributions shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund to include claims paid on behalf of a covered member in excess of \$5,000 and less than \$75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the." This corrects a technical error.

Subsection 362-5.3(e) is amended to change the loss ratio standard for Healthy New York contracts from small group to individual.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

Subsection 362-5.5(a) is amended to require that reports pertaining to stop loss reimbursement or loss ratio be certified by an officer of the company that such report is accurate and complete.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 22, 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

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the premium rate changes. Any notice of rate change must include notice of

this option to change benefit packages. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the recertification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. Through January 31, 2005, de-minimus contributions are those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York. This amendment changes the loss ratio standard for Healthy New York contracts from small group to individual and requires that insurer's reports pertaining to stop loss reimbursement or loss ratio be certified.

4. Costs: The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees. This amendment requires that insurers certify all reports pertaining to stop loss reimbursement and loss ratio but does not require any additional reports.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on

the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. Increase of the loss ratio standard for Healthy New York contracts will increase the percentage of premium dollar that is received in claims by members. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. Federal standards: The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. Compliance schedule: This rulemaking will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. Compliance requirements: Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. Professional services: The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. Compliance costs: The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule-making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. This amendment does require that a notice of rate change include a notice of the right to change benefit packages. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses

to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule-making process.

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

EMERGENCY RULE MAKING

Rules Governing Valuation of Life Insurance Reserves

I.D. No. INS-11-06-00009-E

Filing No. 251

Filing date: Feb. 28, 2006

Effective date: Feb. 28, 2006

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

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517

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

Specific reasons underlying the finding of necessity: During 2004, the Department became aware that some insurers have designed certain life insurance products with the clear intent of circumventing the existing reserve standards. The Department is concerned with the solvency of insurers who fail to set aside sufficient funds to pay claims as they pose a serious threat to consumers who rely on insurers to honor their commitment both now and in the future. In addition, insurers who have elected to circumvent the law place themselves at a competitive advantage over those insurers who follow the rules and establish the appropriate level of reserves. On a daily basis, those insurers who abide by the law suffer substantial losses in terms of market share, as they cannot effectively compete against insurers that do not set aside adequate reserves. This practice of under-reserving by insurers, which have decided market share is more important than the safety and soundness of policyholder funds, puts policyholders at continued risk.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the March 31, 2006 quarterly statement is May 15, 2006. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, the emergency adoption of this first amendment to Regulation No. 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: To prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates, with primary emphasis on valuation of non-level premium and/or non-level benefit life insurance policies, indeterminate premium life insurance policies, universal life insurance policies, variable life insurance policies, and credit life insurance policies in accordance with statutory reserve formulas.

Substance of emergency rule: The First Amendment to Regulation No. 147 provides new mortality and reserve standards for credit life insurance policies. It also provides new reserve standards for certain other specified

life insurance policies. The following is a summary of the amendments to Regulation No. 147:

Section 98.1(a) was amended to include credit life insurance policies and to mention clarification of principles.

Section 98.2(b) was amended to ensure consistency in applicability wording within the regulation.

Section 98.2(i) was amended to state that unless notification was previously provided to the superintendent to adopt lower reserves based on the requirements of this Part, insurers may not adopt such lower reserves without the prior approval of the superintendent.

A new subdivision (j) was added to section 98.2 regarding the use of the minimum mortality standards defined in Part 100 of this Title.

A new subdivision (k) was added to section 98.2 regarding the applicability of this regulation to certain specified life insurance policies.

A new subdivision (l) was added to section 98.2 regarding the applicability of this regulation to credit life insurance.

Subdivision (d)(2) of section 98.4 was amended to change an incorrect reference.

The last sentence of section 98.4(s) was amended to change a reference from 1% to one percent, in order to be consistent with similar references in other sections of the regulation.

Section 98.4(u) was amended to reference the examples and reserve methodologies described in section 98.9 of this Part.

A new Section 98.4(v) was added to describe the reserve methodology for life insurance policies that provide long-term care benefits through the acceleration of benefits.

The third sentence of paragraph (2) of section 98.6(a) was amended to change an incorrect reference to the Contract Segmentation Method to the mortality and interest rates used in calculating basic unitary reserves.

Section 98.7(b)(1)(ii) was amended to have the definition of secondary guarantee period extended to this whole Part rather than just paragraph (1) of section 98.7.

Section 98.7(b)(1)(iii) was amended to provide clarification of an example supplied in this section.

Section 98.7(c) was amended to change the reference from age 100 to the age at the end of the applicable valuation mortality table, since the 2001 CSO Mortality Tables go out to ages greater than 100.

Section 98.8(b) was amended to reference section 98.9 of this Part.

A new section 98.9 was added for certain specified life insurance policies. This section provides examples of policy designs which constitute guarantees and describes the reserve methodologies to be used in valuing such policies.

A new section 98.10 was added for credit life insurance. This section provides minimum mortality standards and minimum reserve standards for such policies.

Section 98.9 was renumbered to section 98.11. This is the severability provision.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 28, 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:

The superintendent's authority for the First Amendment of Regulation No. 147 (11 NYCRR 98) is derived from sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premi-

ums shall be calculated by a method consistent with the principles of this paragraph.

Section 4217(c)(6)(D) permits the superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions for section 4217 to such policies and contracts, as the superintendent deems appropriate.

Section 4217(c)(9) requires that reserves for any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or which is of such a nature that the minimum reserves cannot be determined by the methods prescribed in sections 4217 and 4218, must be computed by a method consistent with the principles of sections 4217 and 4218 as determined by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioner's reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioner's reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract.

Section 4240(d)(7) states that the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

For fraternal benefit societies, section 4517(b)(2) provides that reserves according to the commissioner's reserve valuation method for life insurance certificates providing for a varying amount of benefits or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this subsection (b).

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. After the adoption of the current version of Regulation No. 147, which incorporates the National Association of Insurance Commissioners (NAIC) Valuation of Life Insurance Policies model regulation (adopted in 1999), some insurers developed life insurance products that resulted in reserves being held that were lower than the reserves defined in section 4217 of the Insurance Law and the current version of Regulation No. 147, even though these products had similar death benefit and premium guarantees. To clarify the intent of the NAIC model regulation, NAIC Actuarial Guideline 38 was developed in 2002. The Guideline stated that new policy designs which are created to simply disguise guarantees provided by the policy must be reserved in a manner similar to more typical designs with similar guarantees. Section 98.4(u) of the current version of Regulation No. 147 also contains wording to address consistent reserving principles. In the past year the Department and other states became aware that, in spite of such wording, some insurers were creating new products in order to avoid the reserve methodologies described in Regulation No. 147. As a result, the NAIC began revising the Guideline in 2004 and ultimately addressed the concerns of the Department and other regulators by eliminating any perceived ambiguity in the Guideline for policies issued July 1, 2005 and later. This revision was adopted at the NAIC level in October 2005. The new reserve methodologies for various policy features that constitute guarantees, as described in section 98.9 of this amendment, are consistent with the principles of section 4217 of the Insurance Law and with the standards adopted at the NAIC level for policies issued July 1, 2005 and later. Not adopting this amendment could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

The regulation will also set standards for determining policy reserves for credit life insurance and for determining reserves for life insurance policies that provide long-term care benefits through the acceleration of benefits.

4. Costs:

Administrative costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with the modifications is estimated to be \$50,000 - \$100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

Regarding costs in terms of reserve impact, for insurers following the intent of the Law and Regulation No. 147, there will be no reserve impact. A survey conducted by the Department showed that the reserve impact ranged from zero for many insurers to nearly \$200 million as of December 31, 2004. For no insurer was the reserve impact as a percentage of capital and surplus greater than 16% as of December 31, 2004. Notwithstanding these reserve increases, holding reserves at appropriate levels is mandated by statute and will help guarantee that insurers will be able to pay future claims.

Costs to the Insurance Department will be minimal as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by the amendment to Regulation No. 147. There are no costs to other government agencies or local governments.

5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

One significant alternative considered was to keep the current version of Regulation No. 147, which would result in some insurers holding reserves lower than those intended by section 4217 of the Insurance Law. Over the course of several months, the Department discussed this matter as part of the NAIC Life and Health Actuarial Task Force (LHATF) forums and in several conference calls and meetings with impacted insurers. During mid to late 2004, revised wording to NAIC Actuarial Guideline 38 was exposed in order to extend the principles of the NAIC's Standard Valuation Law to products not contemplated at the time of the writing of the NAIC Law by removing any perceived ambiguity in the Actuarial Guideline. Since the same perceived ambiguity exists in the current version of Regulation No. 147 when the Regulation is applied to some new product designs, the amendment is necessary to clarify the rules that apply to these products. The Department reviewed insurers' concerns related to the exposed wording, but determined that such change was needed because the Department believes the reserves that would be held by these insurers would be lower than those intended by section 4217 of the Insurance Law. Before drafting the amendment to Regulation No. 147, the Department analyzed a spreadsheet that calculates the reserve impact of the revised language to Regulation No. 147. The Department also discussed the impact with several potentially affected insurers. As confirmed by the results of the survey conducted by the Department in early 2005, the Department believes that the amendment to Regulation No. 147 has had the appropriate effect on reserves, i.e., reserves consistent with those intended by the Insurance Law and consistent with the reserve level for similar products.

Another alternative was to keep the current minimum standard for credit life insurance, but this would result in a mortality standard that is inconsistent with the national NAIC standard.

Another alternative was to not include the wording in section 98.4(v) that describes the reserve methodology for life insurance policies that provide long-term care benefits through the acceleration of benefits, but this would result in a standard that is inconsistent with the national NAIC standard.

9. Federal standards:

There are no federal standards in this subject area.

10. Compliance schedule:

This regulation applies to financial statements filed on or after December 31, 2004. The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry.

Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Since this regulation has been adopted on an emergency basis since December 29, 2004, insurers have had ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

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

The amendment to this regulation establishes reserve requirements for certain types of life insurance, including universal life insurance with secondary guarantees, and for credit life insurance.

3. Costs:

Administrative costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with these modifications is estimated to be \$50,000 - \$100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

Regarding costs in terms of reserve impact, for insurers following the intent of the Law and Regulation No. 147, there will be no reserve impact. A survey conducted by the Department showed that the reserve impact ranged from zero for many insurers to nearly \$200 million as of December 31, 2004. For no insurer was the reserve impact as a percentage of capital and surplus greater than 16% as of December 31, 2004.

4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

5. Rural area participation:

The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Insurers that may be impacted by this standard are aware of the issues and should have already formed an estimate of the impact. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 4, 2006 issue of the State Register.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting life insurance reserves for insurers. The regulation is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers authorized to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Rate Case by Orange and Rockland Utilities, Inc.

I.D. No. PSC-11-06-00013-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 or modify, 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 gas service — P.S.C. No. 4.

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

Subject: Major rate case.

Purpose: To increase annual gas revenues by approximately \$23.7 million or 5.5 percent (increase delivery rates by approximately 26 percent).

Public hearing(s) will be held: 5:00 p.m. to 7:00 p.m., April 25, 2006* at Town of Clarkstown, Town Hall, Auditorium, 10 Maple Ave., New City, NY; 11:00 a.m. to 1:00 p.m., April 26, 2006* at City Hall, 16 James St., Middletown, NY

* There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.state.ny.us) under Case No. 05-G-1494.

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

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

Substance of proposed rule: Orange and Rockland Utilities, Inc. (O&R) has filed proposed tariff amendments to produce an increase of about \$23.7 million or 5.5% in annual gas revenues (delivery rate increase of approximately 26%). The Commission may approve, reject or modify, in whole or in part, O&R's proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-1494SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Property Tax Refunds by Aquarion Water Company of Sea Cliff

I.D. No. PSC-11-06-00015-P

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

Proposed action: The commission is considering the petition of Aquarion Water Company of Sea Cliff regarding the disposition of property tax refunds received from Nassau County after challenges to its tax assessments were made for several tax years.

Statutory authority: Public Service Law, section 113-2

Subject: Disposition of property tax refunds received by utilities.

Purpose: To determine the disposition of property tax refunds.

Public hearing(s) will be held: 10:30 a.m., June 8, 2006* at Public Service Commission, Three Empire State Plaza, Albany, NY

* There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Case No. 06-W-0161.

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

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

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Aquarion Water Company of Sea Cliff for the disposition of property tax refunds it has received for several tax years. The company challenged its tax assessments in Nassau County, New York and in satisfaction of those challenges it has received approximately \$1.6 million in refunds. The company proposes to retain a portion of the refunds as an incentive for aggressively managing its costs, and would either return the balance of the funds to customers as a bill credit or apply it against the cost of a new storage tank.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

Data, views or argument 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: five days after the last scheduled public hearing.

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-W-0161SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Frontier Communications of New York, Inc. and Cablevision Lightpath, Inc.

I.D. No. PSC-11-06-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Frontier Communications of New York, Inc. and Cablevision Lightpath, Inc. to revise the interconnection agreement effective on May 18, 2005.

Statutory authority: Public Service Law, section 94(2)

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Frontier Communications of New York, Inc. and Cablevision Lightpath, Inc. in May 2005. The companies subsequently have jointly filed amendments to clarify the collocation terms. The Commission is considering these changes.

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

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

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

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

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

(06-C-0121SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Cocoa Partners, LP

I.D. No. PSC-11-06-00011-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Cocoa Partners, LP to submeter electricity at One Wall Street Court, New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Cocoa Partners, LP to submeter electricity at One Wall Street Court, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Cocoa Partners, LP to submeter electricity at One Wall Street Court, New York, NY.

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

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

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

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

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

(06-E-0213SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charge for Gas Re-Inspection by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-06-00012-P

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

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

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

Subject: Charge for gas re-inspection.

Purpose: To include a \$109 gas re-inspection charge in its gas tariff.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s request to include in its gas tariff a \$109 re-inspection charge in order to curb the number of re-inspections occurring because of prior incorrect or incomplete gas contractor work.

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-G-0231SA1)

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

Transfer of Ownership Interest by Constellation Energy Group, Inc. and FPL Group, Inc.

I.D. No. PSC-11-06-00014-P

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

Proposed action: The commission is considering a petition from Constellation Energy Group, Inc. and FPL Group, Inc. for approval of the transfer of ownership interests, through their merger, in the approximately 1,770 MW Nine Mile Point Nuclear Station, located in Scriba, NY; in the approximately 495 MW R.E. Ginna Nuclear Power Plant, located in Wayne County, NY; and, if required, in a wasteworks system located in the Town of Scriba.

Statutory authority: Public Service Law, sections 70 and 89-h

Subject: Transfer of ownership interests in nuclear electric generating stations and, if required, in a waterworks system.

Purpose: To approve the transfer of ownership interests in nuclear electric generating stations and, if required, in a waterworks system.

Substance of proposed rule: The Commission is considering a petition from Constellation Energy Group, Inc. and FPL Group, Inc. for approval of the transfer of ownership interests, through their merger, in the approximately 1,770 MW Nine Mile Point Nuclear Station, located in Scriba, New York; in the approximately 495 MW R.E. Ginna Nuclear Power Plant, located in Wayne County, New York; and, if required, in a waterworks system located in the Town of Scriba. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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-M-0210SA1)

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

Location of Office, Books and Records by Aquarion Water Company of New York

I.D. No. PSC-11-06-00016-P

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

Proposed action: The commission is considering the petition of Aquarion Water Company of New York for approval to move its office and its books and records out of state.

Statutory authority: Public Service Law, section 89-c(1), (5)(f) and (7)

Subject: Location of office, books and records.

Purpose: To allow Aquarion Water Company of New York to move its offices and records out of New York.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Aquarion Water Company of New York for approval to move its office at 102 Midland Avenue, Port Chester, New York to a facility located at 330 Fairfield Avenue, Stamford, Connecticut. In addition, the company is asking the Commission to sanction the transfer of the accounts, books and records to an out-of-state location, a transfer that has already occurred. The books and records of Aquarion Water Company of New York are currently located in Bridgeport, Connecticut.

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-W-0171SA1)

**Office of Temporary and
Disability Assistance**

NOTICE OF ADOPTION

Public Assistance Employment Programs

I.D. No. TDA-46-05-00002-A

Filing No. 250

Filing date: Feb. 28, 2006

Effective date: March 15, 2006

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

Action taken: Repeal of Part 1300 of Title 12 NYCRR; amendment of Parts 358 and 387; and addition of Part 385 to Title 18 NYCRR.

Statutory authority: L. 2005, ch. 57, part C; Social Services Law, sections 20(3)(d), 34(3)(f) and title 9-B of art. 5

Subject: Public assistance employment programs.

Purpose: To transfer the regulations concerning public assistance employment programs from the Department of Labor to the Office of Temporary and Disability Assistance.

Substance of final rule: The proposed amendments transfer the public assistance employment program regulations, currently located in 12 NYCRR Part 1300, to 18 NYCRR Part 385. The transfer of these regulations implements the provisions of Part C of Chapter 57 of the Laws of 2005 which transferred responsibility for the public assistance employment program from the Department of Labor to the Office of Temporary and Disability Assistance. The regulations that are being transferred from the Department of Labor to the Office of Temporary and Disability Assistance were revised only to refer to correct regulatory citations required by the transfer. In addition, the proposed regulations amend several sections in 18 NYCRR Part 358 concerning fair hearings. Those amendments change references to sections in Part 1300 of 12 NYCRR to sections in Part 385 of 18 NYCRR. The proposed amendments also amend several sections in Part 387 of 18 NYCRR (Food Stamps Program) to delete references to a

repealed section of 18 NYCRR and to refer to sections in 18 NYCRR Part 385.

The purpose of the proposed amendments is solely to effect a transfer of responsibility for the public assistance employment program regulations from the Department of Labor to the Office of Temporary and Disability Assistance. It is not the intent of the transfer of responsibility to make any substantive changes to the regulations.

Final rule as compared with last published rule: Non-substantive changes were made in sections 385.2(e)(1), 385.4(b)(2), 385.8(a)(6)(i)(a), (b), (b)(3)(i)(b), (c)(1), (11), 385.9(c)(1)(v)(a), 385.12(b)(4), (6) and 385.13(b)(13)(ii).

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., Albany, NY 12243, (518) 474-9498, 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 and job impact statement be revised because the changes were purely technical.

Assessment of Public Comment

During the public comment period for the proposed regulations concerning the transfer of the Welfare-to-Work employment regulations from Part 1300 of Title 12 NYCRR to Part 385 of Title 18 NYCRR, the Office of Temporary and Disability Assistance (OTDA) received four comments from the New York City Human Resources Administration (HRA.) Two comments indicating formatting errors and one comment regarding a typographical error have been incorporated in the regulations that are being adopted. HRA commented that section 385.4(b)(1) should be changed to be consistent with the Farm Security and Rural Investment Act of 2002 which eliminated the \$25 cap on federal reimbursement for transportation costs related to participation in a Food Stamp Employment and Training (FSET) assignment. The proposed regulations transfer the existing regulations from 12 NYCRR to 18 NYCRR and were not intended to make substantive changes to the regulations. We anticipate the requested change will be put forward separately with a package of substantive regulatory amendments in 2006.

The New York State Department of Health also indicated that they had reviewed the proposed regulations and had no comment.