

# RULE MAKING ACTIVITIES

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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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Asian Long Horned Beetle Quarantine

**I.D. No.** AAM-28-07-00018-A  
**Filing No.** 1198  
**Filing date:** Oct. 30, 2007  
**Effective date:** Nov. 14, 2007

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

**Action taken:** Amendment of section 139.2 of Title 1 NYCRR.  
**Statutory authority:** Agriculture and Markets Law, sections 18, 164 and 167

**Subject:** Firewood (all hardwood species), nursery stock, logs, green lumber, stumps, roots, branches and debris of a half inch or more in diameter of the following trees: maple, horse chestnut, silk tree or mimosa, birch, poplar, willow, elm, hackberry, ash, plane tree or sycamore, and mountain ash.

**Purpose:** To modify the Asian Long Horned Beetle quarantine by establishing a quarantine area on Staten Island in order to prevent the spread of the beetle to other areas.

**Text or summary was published** in the notice of proposed rule making, I.D. No. AAM-28-07-00018-P, Issue of July 11, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Robert J. Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

**Assessment of Public Comment**  
The agency received no public comment.

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## Division of Criminal Justice Services

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### EMERGENCY RULE MAKING

#### Confirmation of a Victim of Human Trafficking

**I.D. No.** CJS-46-07-00007-E  
**Filing No.** 1199  
**Filing date:** Oct. 30, 2007  
**Effective date:** Nov. 1, 2007

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

**Action taken:** Addition of Part 6174 to Title 9 NYCRR.

**Statutory authority:** Executive Law, section 837(13); and L. 2007, ch. 74, section 14

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

**Specific reasons underlying the finding of necessity:** The proposed rule provides a mechanism to allow victim of human trafficking to receive interim State services pending certification by the federal government that they are a victim of a severe form of trafficking and therefore eligible for federal services. As part of the federal Trafficking Victims Protection Act of 2000, the federal government provides social services and immigration assistance to persons who are certified to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing federal, state, and local social services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the federal government to help victims obtain special visas that allow them to remain in the United States. These services are crucial to ensuring victim's assistance in investigating and prosecuting traffickers.

There was a gap in the provisions of services, however, for pre-certified victims. Chapter 74 of the Laws of 2007 (effective November 1, 2007) addresses this gap in services by authorizing access to a broad range of services to pre-certified victims of human trafficking, but only if the Division of Criminal Justice Services, in consultation with the Office of Temporary and Disability Assistance, determines that victim appears to meet the criteria for certification under the federal Trafficking Victims Protection Act of 2000 or is otherwise eligible for federal, state, or local benefits (see Social Services Law section 483-cc). This rule provides the procedure for the Division to make such determination as required by Social Services Law section 483-cc.

The services authorized by Social Services Law section 483-cc are integral to ensuring victims' assistance in investigating and prosecuting human traffickers. Failure to promulgate this rule on an emergency basis may jeopardize prosecution of human trafficking crimes in New York State.

**Subject:** Confirmation of a victim of human trafficking.

**Purpose:** To implement the provision of Social Services Law section 483-cc by establishing a procedure to determine whether a person appears to be a victim of a severe form of trafficking or appears to be eligible for any Federal, State, or local benefits.

**Text of emergency rule:** A new Part 6174 is added to Title 9 NYCRR to read as follows:

#### Part 6174

##### Confirmation as a Victim of Human Trafficking

§ 6174.1 Purpose. The provisions of this Part shall govern the Division's determination whether an individual appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code or appears to be otherwise eligible for any federal, state or local benefits and services and, if so, referral for services, as provided in Social Services Law § 483-cc.

§ 6174.2 Definitions. When used in this Part:

(a) The term human trafficking victim shall mean a person who is a victim of sex trafficking as defined in section 230.34 of the Penal Law or a victim of labor trafficking as defined in section 135.35 of the Penal Law.

(b) The term Division shall mean the Division of Criminal Justice Services.

(c) The term Commissioner shall mean the commissioner of the Division of Criminal Justice Services.

(d) The term Human Trafficking Director shall mean the Human Trafficking Director within the Division of Criminal Justice Services.

(e) The term Office shall mean the Office of Temporary and Disability Assistance.

§ 6174.3 Confirmation as a human trafficking victim. (a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency or a district attorney's office to be a human trafficking victim, that agency or office shall notify the Human Trafficking Director and the Office on a form and in a manner prescribed by the Commissioner.

(b) Within three business days after receipt of such referral, the Human Trafficking Director, after consultation with the Office, shall make a determination whether the person appears to either:

(1) meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code; or

(2) be otherwise eligible for any federal, state, or local benefits and services.

(c) If upon good cause, and after consultation with the Office, the Director of Human Trafficking determines that more time is required to make such determination, the Director of Human Trafficking may extend the time period set forth in subdivision (b) of this section.

(d) In making such determination, the Human Trafficking Director shall consider, among other things:

(1) the age and citizenship of the person, if known;

(2) the facts and circumstances surrounding the victimization upon which the referral is based;

(3) the facts and circumstances regarding the Penal Law trafficking crime committed against the victim;

(4) whether the person had been recruited, harbored, transported, provided, or obtained for labor or services through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery;

(5) whether the person had been recruited, harbored, transported, provided, or obtained for the purpose of a commercial sex act induced by force, fraud, or coercion; or

(6) whether the person had been recruited, harbored, transported, provided, or obtained for the purpose of a commercial sex act and the person induced to perform such act was less than 18 years old; and

(7) whether the person:

(i) is willing to assist in every reasonable way with respect to the investigation and prosecution of severe forms of trafficking or of state and local crimes where severe forms of trafficking in persons appear to have been involved; and

(ii) whether the person appears to meet the criteria for a bona fide application for a visa under section 1101(a)(15)(T) of Title 8 of the United

States Code or is a person whose continued presence in the United States the United States Attorney General and the United States Secretary of Homeland Security are likely to ensure in order to effectuate prosecution of trafficking in persons.

(e) If the Human Trafficking Director determines that the person appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code, or appears to be otherwise eligible for any federal, state or local benefits and services, he or she shall immediately notify the Office in writing which shall thereafter notify the victim and the referring law enforcement agency or district attorney's office, and the Office may assist the victim and referring law enforcement agency or a district attorney's office in making services available to the victim.

(f) If the Human Trafficking Director determines that the person does not appear to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code, or does not appear to be otherwise eligible for any federal, state or local benefits and services, he or she shall immediately notify in writing the victim, the referring law enforcement agency or district attorney's office, and the Office.

(g) The Human Trafficking Director shall issue to the victim, the Office, and referring law enforcement agency or district attorney's office a written explanation setting forth the basis for his or her determination within ten business days of receipt of the referral.

§ 6174.4 Appeal. (a) A determination by the Human Trafficking Director that the person does not appear to either meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United State Code or be otherwise eligible for any federal, state, or local benefits and services may be appealed to the Commissioner.

(b) Such appeal shall set forth the reasons why the appellant believes the determination rendered by the Human Trafficking Director was incorrect, and shall be filed with the Commissioner in writing within twenty business days of issuance of the Human Trafficking Director's written explanation.

(c) The Commissioner, after consultation with the Office, shall issue a written response to the appellant, the Office, and the referring law enforcement agency or district attorney's office within fifteen business days of receipt of the written appeal. If the Commissioner determines that the appellant does appear to either meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United State Code or be otherwise eligible for any federal, state, or local benefits and services, the Office may assist the victim and referring law enforcement agency or district attorney's office in receiving services.

§ 6175.5 Consultation with the Office. The Division shall consult with the Office regarding the confirmation of human trafficking victims pursuant to Social Services Law section 483-cc, including, but not limited to, the form and manner in which a law enforcement agency or district attorney's office shall refer a person who reasonably appears to be a human trafficking victim.

**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 January 27, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Mark Bonacquist, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, (518) 457-8413

#### Regulatory Impact Statement

1. Statutory authority: Executive Law section 837(13); chapter 74, section 14, of the laws of 2007.

2. Legislative objectives: Executive Law section 837(13) authorizes the Commissioner of the Division of Criminal Justice Services to promulgate regulations necessary or convenient to the performance of the functions, powers, and duties of the Division. Chapter 74, section 14, of the laws of 2007 authorizes the Division to promulgate regulations necessary for the timely implementation of the provisions of Social Services law section 483-cc.

3. Needs and benefits: In 2007, the United States Department of State estimated that approximately 14,500 to 17,500 people are trafficked into the United States each year for forced labor, involuntary domestic servitude, or sexual exploitation. New York is a frequent hub of such activity. Trafficking also originates domestically, and both types of trafficking frequently involve children. In fact, the Office of Children and Family Services recently estimated that over 2,500 children in New York State are exploited for purposes of commercial sexual activity each year.

The rule provides a mechanism to allow a victim of human trafficking to receive interim State services pending certification by the federal government that they are a victim of a severe form of trafficking and therefore eligible for federal services. As part of the federal Trafficking Victims Protection Act of 2000, the federal government provides social services and immigration assistance to persons who are confirmed to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing federal, state, and local services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the federal government to help victims obtain special visas. These services are crucial to ensure victims' assistance in investigating and prosecuting human trafficker crimes.

There was a gap in the provision of services, however, for pre-certified victims. Chapter 74 of the Laws of 2007 addressed this gap in services by authorizing access to a broad range of services to pre-certified victims of human trafficking, but only if the Division of Criminal Justice Services, in consultation with the Office of Temporary and Disability Assistance (OTDA), determines that victim appears to meet the criteria for certification under the federal Trafficking Victims Protection Act of 2000 or is otherwise eligible for federal, state, or local benefits (see Social Services Law section 483-cc). This rule provides the procedure for the Division to make such determinations as required by Social Services Law section 483-cc.

The services authorized by Social Services Law section 483-cc are integral to ensuring victims' assistance in investigating and prosecuting human trafficker crimes. Failure to promulgate this rule on an emergency basis may jeopardize prosecution of human trafficking crimes in New York State.

#### 4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: There should be minimal costs to law enforcement agencies and district attorneys who will be referring potential victims of human trafficking to the Division and the OTDA.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Implementation of the confirmation process will be accomplished using existing resources.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based on the fact that law enforcement agencies and district attorneys are required only to fax a form containing victim information to the Division and the OTDA.

5. Local government mandates: This proposal would implement the mandate of Social Services Law section 483-cc that law enforcement agencies and district attorneys notify the Division and the OTDA as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim, and provide certain information regarding such victim.

6. Paperwork: The rule requires law enforcement agencies and district attorneys to complete and fax a referral form, prescribed by the Division, as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim which will provide certain information regarding such victim.

7. Duplication: None. There are currently no services available to pre-certified victims of human trafficking.

8. Alternatives: The Commissioner considered not promulgating regulations to implement the provisions of Social Services Law section 483-cc. This alternative was rejected, however, because the Commissioner believes it is necessary to clarify the procedures for law enforcement agencies, district attorneys, and victims to follow in order to implement this new law.

9. Federal standards: As part of the federal Trafficking Victims Protection Act of 2000, the federal government provides social services and immigration assistance to persons who are certified to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing federal, state, and local services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the federal government to help victims obtain special visas that allow them to remain in the United States to testify against traffickers. Services are not available, however, for pre-certified, non-citizen victims.

10. Compliance schedule: Regulated parties are expected to be able to comply with the rule immediately.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: The rule provides a mechanism to allow a victim of human trafficking to receive interim State services pending certification by the federal government that they are a victim of a severe form of trafficking and therefore eligible for federal services. As part of the federal Trafficking Victims Protection Act of 2000, the federal government provides social services and immigration assistance to persons who are confirmed to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing federal, state, and local services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the federal government to help victims obtain special visas. These services are crucial to ensuring that victims assist with the investigation and prosecution of human trafficking crimes.

There was a gap in the provision of services, however, for pre-certified victims. Chapter 74 of the Laws of 2007 addressed this gap in services by authorizing access to a broad range of services to pre-certified victims of human trafficking, but only if the Division of Criminal Justice Services, in consultation with the Office of Temporary and Disability Assistance (OTDA), determines that victim appears to meet the criteria for certification under the federal Trafficking Victims Protection Act of 2000 or is otherwise eligible for federal, state, or local benefits (see Social Services Law section 483-cc). This rule provides the procedure for the Division to make such determinations as required by Social Services Law section 483-cc.

2. Compliance requirements: This rule would implement the mandate of Social Services Law section 483-cc that law enforcement agencies and district attorneys notify the Division and the OTDA as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim, and provide certain information regarding such victim. The rule requires law enforcement agencies and district attorneys to complete and fax a referral form, prescribed by the Division, as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim which will provide certain information regarding such victim.

3. Professional services: No professional services are required to comply with the rule.

4. Compliance costs: There should be minimal costs to law enforcement agencies and district attorneys who will be referring potential victims of human trafficking to the Division and the OTDA.

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: The Division attempted to minimize adverse impact on regulated parties by clarifying and standardizing the referral process for law enforcement agencies and district attorneys offices. Representatives of law enforcement agencies and district attorneys offices were consulted regarding the language of the rule.

7. Small business and local government participation: Representatives of law enforcement agencies and district attorneys offices were consulted regarding the language of the rule. Their comments and suggestions were considered in formulating the rule. The rule does not apply to small businesses.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: The rule applies to every law enforcement agencies and district attorney office in New York State, many of which are located in rural areas.

2. Reporting, record keeping and other compliance requirements and professional services: This rule would implement the mandate of Social Services Law section 483-cc that law enforcement agencies and district attorneys notify the Division and the OTDA as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim, and provide certain information regarding such victim. The rule requires law enforcement agencies and district attorneys to complete and fax a referral form, prescribed by the Division, as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim which will provide certain information regarding such victim. No professional services not already being utilized will be needed to comply with the rule.

3. Costs: There should be minimal costs to law enforcement agencies and district attorneys who will be referring potential victims of human trafficking to the Division and the OTDA.

4. Minimizing adverse impact: The Division attempted to minimize adverse impact on regulated parties by clarifying and standardizing the referral process for law enforcement agencies and district attorneys offices.

5. Rural area participation: Representatives of law enforcement agencies and district attorneys offices, many of whom serve rural areas of the State, were consulted regarding the language of the rule. Their comments and suggestions were considered in formulating the rule.

#### **Job Impact Statement**

The rule provides a mechanism to allow a victim of human trafficking to receive interim State services pending certification by the federal government that they are a victim of a severe form of trafficking and therefore eligible for federal services. As such, it is apparent from the nature and purpose on the proposal that it will have no impact on jobs and employment opportunities.

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## Education Department

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### EMERGENCY RULE MAKING

#### **Universal Prekindergarten Programs**

**I.D. No.** EDU-24-07-00027-E

**Filing No.** 1192

**Filing date:** Oct. 29, 2007

**Effective date:** Oct. 29, 2007

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

**Action taken:** Repeal of Subpart 151-1 and addition of new Subpart 151-1 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3602-e(1), (2), and (5)-(16); and L. 2007, ch. 57, part B, section 19

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to implement Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, by establishing uniform quality standards and other requirements for universal prekindergarten programs, and to otherwise conform the Commissioner's regulations to the statute.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e to:

(1) eliminate the requirement that a district form a prekindergarten policy advisory board to make a recommendation to the Board of Education regarding whether the district should implement a prekindergarten program;

(2) allow one or more school districts to submit a joint application to operate a joint universal prekindergarten program with a maximum grant award equal to the sum of the grant awards computed for each participating district;

(3) require that universal prekindergarten programs provide for: (i) an assessment of the development of language, cognitive and social skills; (ii) staff development and teacher training for staff and teachers in all settings in which prekindergarten services are provided; and (iii) selection of eligible children to receive prekindergarten program services on a random basis, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program;

(4) require the Department to prescribe uniform quality standards for universal prekindergarten programs. This section also requires that the regulations of the Commissioner establish minimum curriculum standards to ensure that universal prekindergarten programs include curricula aligned with the State learning standards, that ensures continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve. Further, such regulations must include performance standards for prekindergarten programs, including procedures for assessing the performance of programs and mechanisms for tracking the progress of programs and reporting such progress to parents and the public. In addition, this section provides the Department with the authority to grant a waiver of any inconsistent provisions of the regulations to allow school districts that operated targeted

prekindergarten programs in the 2006-2007 school year to continue to operate under the regulations that applied to the targeted prekindergarten program in that year.

The proposed amendment was adopted at the May 21-22, 2007 Regents meeting as an emergency measure, effective May 29, 2007, in order to immediately establish uniform quality standards and other requirements for universal prekindergarten programs that are consistent with Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, so that affected school districts may timely plan and implement such programs for the 2007-2008 school year pursuant to statutory requirements. A Notice of Emergency Adoption and Proposed Rule Making was published in the *State Register* on June 13, 2007.

A second emergency adoption was taken at the July 25, 2007 Regents meeting for the preservation of the general welfare to ensure that the emergency rule adopted at the May Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

A third emergency adoption was taken at the September 10, 2007 Regents meeting to immediately adopt revisions to the rule in response to public comment and to otherwise ensure that the emergency rule adopted at the May Regents meeting, and readopted at the July Regents meeting, remains continuously in effect until the effective date of its adoption as a permanent rule.

Further revisions have been made to the proposed rule and a second Notice of Revised Rule Making will be published in the *State Register* on October 31, 2007. Pursuant to the State Administrative Procedure Act (SAPA) section 202(4-a), the revised rule cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the *State Register*. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be adopted by regular action, after expiration of the 30-day public comment period for a revised rule making, is the December 13-14, 2007 Regents meeting, and pursuant to SAPA section 203(1), the earliest the adopted rule can become effective is upon its publication in the *State Register* on January 3, 2008. However, the September emergency action will expire on November 16, 2007, 60 days after its filing with the Department of State on September 18, 2007. A lapse in the rule's effectiveness would disrupt implementation of universal prekindergarten programs under Education Law section 3602-e.

A fourth emergency adoption is therefore necessary for the preservation of the general welfare to adopt revisions to provide additional flexibility with respect to the staffing of eligible agencies offering universal prekindergarten instruction, and to otherwise ensure that the emergency rule adopted at the May Regents meeting, and readopted at the July and September Regents meetings, remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the December meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 30-day public comment period prescribed by the State Administrative Procedure Act.

**Subject:** Universal prekindergarten programs.

**Purpose:** To conform Subpart 151-1 of the commissioner's regulations to Education Law, section 3602-e, as amended by L. 2007, ch. 57, by establishing uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive process, and facility requirements.

**Substance of emergency rule:** The proposed amendment was previously adopted as an emergency rule at the May, July and September Regents meetings. Since then, further substantial revisions were made to the proposed rule and the rule, as so revised, was adopted as an emergency action at the October Regents meeting. A second Notice of Revised Rule Making with respect to such changes will be published in the *State Register* on October 31, 2007. The following is a summary of the provisions of the October emergency rule.

Section 151-1.1 specifies that the purpose of this Subpart is to provide four-year-old children with universal opportunity to access prekindergarten programs.

Section 151-1.2 defines approved expenditures, eligible agencies, eligible child, and universal prekindergarten program plan.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require:

(1) use of curricula, aligned with the State learning standards, that ensures continuity with instruction in the early elementary grades and is

integrated with the district's instructional program in kindergarten through grade twelve;

(2) early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) activities to be learner-centered and to designed promote a child's total growth and development;

(4) a process for assessing the developmental baseline and progress of all children participating in the program, which shall at a minimum provide for on-going assessment of the development of language, cognitive and social skills in children;

(5) all prekindergarten students shall be screened as new entrants as set forth in Part 117 of Title 8; prekindergarten programs operating less than three hours shall provide a nutritional meal and/or snack; and programs operating more than three hours shall provide appropriate meals and snacks to ensure the nutritional needs of the children are met;

(6) a maximum class size of 20 children and that there be one teacher and one paraprofessional for classes up to 18 children and one teacher and two paraprofessionals for classes of 19 or 20 children;

(7) universal prekindergarten program teachers and paraprofessionals in both school district and eligible agency settings to meet minimum staff qualifications;

(8) school districts to provide fiscal and program oversight and be accountable for student progress in all prekindergarten classrooms in district and agency settings;

(9) professional development be based on the instructional needs of children and be provided to all teachers and staff in both district and agency settings;

(10) the development of procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(11) school districts to provide, either directly or through referral, support services to children and their families necessary to support the child's participation in the program.

Section 151-1.4 sets forth provisions related to the design of programs. Programs may be either full-day or half-day and must operate five days per week a minimum of 180 days per year. A district may operate a summer only program during the months of July and August only upon demonstrating to the Commissioner's satisfaction that the school district is unable to operate the program during the regular school session because of a lack of available space in both district buildings and eligible agencies. Unless waived by the Commissioner, a minimum of 10 percent of the total grant must be used for the provision of the instructional program through collaborative efforts with eligible agencies.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.4(e) provides that the environment and learning activities of the program shall be designed to promote and increase inclusion of preschool children with disabilities.

Section 151-1.4(f) provides that the program be designed to ensure that participating children with limited English proficiency are provided equal access to the program and opportunities to achieve the same program goals and standards as other participating children.

Section 151-1.5 establishes to application process by which school districts access their Universal Prekindergarten allocations. Two or more school districts may submit a joint application to operate a joint program with a maximum grant that is the sum of the allocation computed for each participating district. Provision is made for a written request to the Commissioner for a variance: (1) of the 10 percent set aside for collaboration as set forth in Education Law section 3602-e(5)(e); (2) class size requirements; (3) for districts that operated a targeted program under Subpart 151-2 in the 2006-2007 school year; and (4) for a summer only program, for district unable to operate during the regular school session.

Section 151-1.5(b)(7)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(a) and (b)(8) allow two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6 provides that school districts must use a competitive process to determine which eligible agencies will collaborate with the district for the provisions of the instructional program. This section establishes minimum requirements for the request for proposals and identified criteria to be used when evaluating responses to such request. Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

Section 151-1.7 states the facilities requirements for Universal Prekindergarten programs. These requirements are unchanged from the current regulation.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-24-07-00027-EP, Issue of June 13, 2007. The emergency rule will expire December 27, 2007.

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

#### **Regulatory Impact Statement**

##### STATUTORY AUTHORITY:

Education Law section 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 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 3602-e(12) authorizes the Regents and the Commissioner to adopt regulations to implement the provisions of that section, relating to universal prekindergarten programs.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(3) and (4) to eliminate the requirement that a district form a prekindergarten policy advisory board to make a recommendation to the Board of Education regarding whether the district should implement a prekindergarten program.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(5) to allow one or more school district to submit a joint application to operate a joint universal prekindergarten program with a maximum grant award equal to the sum of the grant awards computed for each participating district.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(7) to require that universal prekindergarten programs provide for: (1) an assessment of the development of language, cognitive and social skills; (2) staff development and teacher training for staff and teachers in all settings in which prekindergarten services are provided; and (3) selection of eligible children to receive prekindergarten program services on a random basis, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(12) to require the Department to prescribe uniform quality standards for universal prekindergarten programs. This section also requires that the regulations of the Commissioner establish minimum curriculum standards to ensure that universal prekindergarten programs have strong instructional content aligned with the State learning standards and integrated with the school district's instructional program in grades kindergarten through twelve. Further, such regulations must include performance standards for prekindergarten programs, including procedures for assessing the performance of programs and mechanisms for tracking the progress of programs and reporting such progress to parents and the public. In addition, this section provides the Department with the authority to grant a waiver of any inconsistent provisions of the regulations to allow school districts that operated targeted prekindergarten programs in the 2006-2007 school year to continue to operate under the regulations that applied to the targeted prekindergarten program in that year.

##### LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement changes to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007.

##### NEEDS AND BENEFITS:

The proposed amendment is necessary to conform Subpart 151-1 to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007. Subpart 151-1 is repealed and a new Subpart 151-1 is added incorporating the required changes. Below is a summary of the new or enhanced provisions of the amended Subpart 151-1.

Section 151-1.2(b) redefines "eligible agencies" to include libraries and museums.

Section 151-1.2(d) eliminates the requirement that the program plan be developed and submitted to the Board by a prekindergarten policy advisory board.

Section 151-1.3 establishes uniform quality standards for universal prekindergarten classrooms, including both district-based and eligible agency-based settings, including that school districts:

(1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;

(2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;

(4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;

(5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;

(6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;

(7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4 requires:

(1) school districts to establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program;

(2) that the environment and learning activities of the program shall be designed to promote and increase inclusion of preschool children with disabilities; and

(3) that the program be designed to ensure that participating children with limited English proficiency are provided equal access to the program and opportunities to achieve the same program goals and standards as other participating children.

Section 151-1.5(b)(7)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(a) and (b)(8) allow two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

#### COSTS:

The proposed amendment is necessary to implement Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, and will not impose any costs beyond those inherent in the statute.

(a) Costs to State government: None.

(b) Costs to local government: Universal Prekindergarten is not a mandated program. For school districts opting to participate, the provisions that could be expected to have a cost impact are those associated with selection and implementation of curricula and assessments. These costs will vary depending on the curricula and assessment(s) selected, the familiarity of the district's staff with those products and the size of the program. However, the anticipated cost for school districts would be minimal.

(c) Costs to private regulated parties: Eligible agencies contracting with school districts for the provision of the instructional program may be expected to initially experience some additional costs should they need to acquire additional materials and supplies necessary to implement the curricula and assessment(s) selected by the school district. These costs will be offset, in part if not entirely, by the fee for service paid by the school district.

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

#### LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on local governments. Universal Prekindergarten is not a mandated program.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require school districts to:

(1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;

(2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;

(4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;

(5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;

(6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;

(7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.5(b)(4)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(b)(5) allows two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

#### PAPERWORK:

Each school district planning to receive an allocation to operate a universal prekindergarten program shall submit an application to the Department for approval, in a format and pursuant to a timeline prescribed by the Commissioner. The application shall include a written request for a variance where applicable.

Two or more school districts may submit a joint application to operate a joint program, in which case the application must also include a partnership agreement that specifies the roles and responsibilities of each school district for implementation and oversight of the program.

A final report, including such program and fiscal information as requested by the Department, shall be submitted within 30 days after the program ends.

School districts shall develop a competitive process, using a request for proposals, to determine which eligible agencies it will collaborate with to implement the program, including at minimum:

(1) a description of the services to be provided;

(2) a detailed narrative describing how the agency will meet the program's goals and objections;

(3) a description of the agency's staff qualifications; and

(4) a budget of proposed expenditures for services.

**DUPLICATION:**

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

**ALTERNATIVES:**

In developing the proposed amendment, the Department reviewed the requirements established for prekindergarten programs in several other states. Staff reviewed the quality program benchmarks established by the National Institute for Early Education Research, which publishes the annual State Preschool Yearbook, to identify areas of "best practice" where New York State could strengthen its requirements. In addition, staff reviewed and discussed a comparison of targeted and universal prekindergarten program requirements to identify areas where greater consistency could be achieved.

**FEDERAL STANDARDS:**

There are no related federal standards.

**COMPLIANCE SCHEDULE:**

It is anticipated that school districts will be able to comply with the provisions of this amendment by September 1, 2007.

**Regulatory Flexibility Analysis**

**Small Businesses:**

The proposed amendment merely conforms Subpart 151-1 of the Commissioner's Regulations to the provisions of Section 3602-e of Education Law as amended by Chapter 57 of the Laws of 2007, relating to universal prekindergarten programs operated by public school districts, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that small businesses will not be affected, no further measures are 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 Governments:**

**EFFECT OF RULE:**

The proposed amendment applies to all universal prekindergarten programs operated by public school districts, regardless of the setting in which such services are provided.

**COMPLIANCE REQUIREMENTS:**

The proposed amendment is necessary to conform Subpart 151-1 to section 3602-e of Education Law, as amended by Chapter 57 of the Laws of 2007.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require school districts to:

(1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;

(2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;

(4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;

(5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;

(6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;

(7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.5(b)(4)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(b)(5) allows two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

Each school district planning to receive an allocation to operate a universal prekindergarten program shall submit an application to the Department for approval, in a format and pursuant to a timeline prescribed by the Commissioner. The application shall include a written request for a variance where applicable.

Two or more school districts may submit a joint application to operate a joint program, in which case the application must also include a partnership agreement that specifies the roles and responsibilities of each school district for implementation and oversight of the program.

A final report, including such program and fiscal information as requested by the Department, shall be submitted within 30 days after the program ends.

School districts shall develop a competitive process, using a request for proposals, to determine which eligible agencies it will collaborate with to implement the program, including at minimum:

(1) a description of the services to be provided;

(2) a detailed narrative describing how the agency will meet the program's goals and objections;

(3) a description of the agency's staff qualifications; and

(4) a budget of proposed expenditures for services.

**PROFESSIONAL SERVICES:**

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

**COMPLIANCE COSTS:**

The proposed amendment is necessary to implement Education Law section 3602-e, as added by Chapter 57 of the Laws of 2007, 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 eligible agencies, as follows:

(1) Universal Prekindergarten is not a mandated program. For school districts opting to participate, the provisions that could be expected to have a cost impact are those associated with selection and implementation of curricula and assessments. These costs will vary depending on the curricula and assessment(s) selected, the familiarity of the district's staff with those products and the size of the program. However, the anticipated cost for school districts would be minimal.

(2) Eligible agencies contracting with school districts for the provision of the instructional program may be expected to initially experience some additional costs should they need to acquire additional materials and supplies necessary to implement the curricula and assessment(s) selected by the school district. These costs will be offset, in part if not entirely, by the fee for service paid by the school district.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed amendment does not impose new technological requirements on school districts. Economic feasibility is address in the Compliance requirements section above.

**MINIMIZING ADVERSE IMPACT:**

The proposed amendment is necessary to implement Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establishing differing requirements or to exempt school districts and eligible agencies from coverage by the rule, except where such waiver authority is statutorily stated. Nevertheless, in establishing the uniform quality standards and other provisions necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, the Department has considered a variety of options and selecting those approaches that will achieve the goal of increased program quality while minimizing additional costs and compliance requirements upon school districts and eligible agencies. For example, the proposed rule provides a transition period for eligible agencies to comply with the minimum staff qualifications and establishes an alternative to teacher certification for teachers employed by eligible agencies.

**LOCAL GOVERNMENT PARTICIPATION:**

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. The proposed amendment will also be posted on the Universal Prekindergarten web site to facilitate a wide distribution. In addition, the proposed amendment will be disseminated to the Department's External Work Group on Universal Prekindergarten, which includes representatives from small businesses and local government.

#### **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.

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

The proposed amendment is necessary to conform Subpart 151-1 to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require school districts to:

(1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;

(2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;

(4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;

(5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;

(6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;

(7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.5(b)(4)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(b)(5) allows two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

Each school district planning to receive an allocation to operate a universal prekindergarten program shall submit an application to the Department for approval, in a format and pursuant to a timeline prescribed by the Commissioner. The application shall include a written request for a variance where applicable.

Two or more school districts may submit a joint application to operate a joint program, in which case the application must also include a partnership agreement that specifies the roles and responsibilities of each school district for implementation and oversight of the program.

A final report, including such program and fiscal information as requested by the Department, shall be submitted within 30 days after the program ends.

School districts shall develop a competitive process, using a request for proposals, to determine which eligible agencies it will collaborate with to implement the program, including at minimum:

(1) a description of the services to be provided;

(2) a detailed narrative describing how the agency will meet the program's goals and objections;

(3) a description of the agency's staff qualifications; and

(4) a budget of proposed expenditures for services.

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

##### **COMPLIANCE COSTS:**

The proposed amendment is necessary to implement Education Law section 3602-e, as added by Chapter 57 of the Laws of 2007, 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 eligible agencies, as follows:

(1) Universal Prekindergarten is not a mandated program. For school districts opting to participate, the provisions that could be expected to have a cost impact are those associated with selection and implementation of curricula and assessments. These costs will vary depending on the curricula and assessment(s) selected, the familiarity of the district's staff with those products and the size of the program. However, the anticipated cost for school districts would be minimal.

(2) Eligible agencies contracting with school districts for the provision of the instructional program may be expected to initially experience some additional costs should they need to acquire additional materials and supplies necessary to implement the curricula and assessment(s) selected by the school district. These costs will be offset, in part if not entirely, by the fee for service paid by the school district.

##### **MINIMIZING ADVERSE IMPACT:**

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establishing differing requirements or to exempt school districts and eligible agencies from coverage by the rule, except where such waiver authority is statutorily stated. Nevertheless, in establishing the uniform quality standards and other provisions necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, the Department has considered a variety of options and selecting those approaches that will achieve the goal of increased program quality while minimizing additional costs and compliance requirements upon school districts and eligible agencies. For example, the proposed rule provides a transition period for eligible agencies to comply with the minimum staff qualifications and establishes an alternative to teacher certification for teachers employed by eligible agencies. Because this amendment implements statutory provisions that are applicable to school districts across the State, it was not possible to provide for a lesser standard or an exemption for school districts in rural areas.

##### **RURAL AREA PARTICIPATION:**

The proposed amendment has been sent for review and comment to members of the Department's Rural Advisory Committee, which includes representatives from rural areas. The proposed amendment will also be posted on the Universal Prekindergarten web site to facilitate a wide distribution. Additionally, the proposed amendments will be disseminated to the Department's External Work Group on Universal Prekindergarten, which includes representatives from small businesses and local government located in rural areas.

##### **Job Impact Statement**

The proposed amendment is necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, relating to universal prekindergarten programs operated by public school districts, and will not have an adverse impact on jobs or employment activities. 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.

##### **Assessment of Public Comment**

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

## EMERGENCY RULE MAKING

### Delegation of Authority Concerning Charter Schools

**I.D. No.** EDU-32-07-00007-E

**Filing No.** 1182

**Filing date:** Oct. 29, 2007

**Effective date:** Oct. 29, 2007

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

**Action taken:** Amendment of section 3.16 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1) and (1-a); and L. 2007, ch. 57, part D-2, section 7

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

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to delegate to the Commissioner of Education the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

Effective July 1, 2007, Education Law section 2857(1) was amended by section 7 of Part D-2 of Chapter 57 of the Laws of 2007 to require, among other things, school districts in which charter schools are located to hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter. In addition, a new Education Law section 2857(1-a) was enacted that provides that "[i]n the event the school district fails to conduct a public hearing, the board of regents shall conduct a public hearing to solicit comments from the community in connection with the issuance, revision, or renewal of a charter."

Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

The proposed rule was adopted at the July 25, 2007 Regents meeting as an emergency measure, effective July 31, 2007, in order to immediately delegate to the Commissioner the Board's authority to conduct hearings pursuant to Education Law section 2857(1-a), and thereby ensure that any such hearings are expeditiously conducted pursuant to statutory requirements during the 2007-2008 school year. A Notice of Proposed Rule Making was published in the State Register on August 8, 2007.

The proposed rule has been adopted as a permanent rule at the October 22-23, 2007 Regents meeting. Pursuant to the State Administrative Procedure Act section 203(1), the earliest the adopted rule can become effective is upon its publication in the State Register on November 14, 2007. However, the July emergency rule will expire on October 28, 2007, 90 days after its filing with the Department of State on July 31, 2007. A lapse in the rule's effectiveness could delay the scheduling and/or disrupt the conducting of charter school public hearings pursuant to Education Law section 2857(1-a).

A second emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

**Subject:** Delegation of authority to conduct and hold public hearings concerning charter schools under Education Law, section 2857(1-a).

**Purpose:** To delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law, section 2857(1-a).

**Text of emergency rule:** Section 3.16 of the Rules of the Board of Regents is amended, effective October 29, 2007, as follows:

§ 3.16 Delegation of authority with respect to [charter school complaints] *charter schools*.

(a) *Complaints against charter schools.* The Board of Regents delegates to the Commissioner of Education the authority to receive, investigate and respond to complaints presented to the Board of Regents pursuant

to Education Law section 2855(4), the authority to issue appropriate remedial orders pursuant to Education Law section 2855(4), and the authority to place a charter school on probationary status and to develop and impose a remedial action plan pursuant to Education Law section 2855(3).

(b) *Hearings.* The Board of Regents delegates to the Commissioner of Education the authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a).

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-32-07-00007-P, Issue of August 8, 2007. The emergency rule will expire December 27, 2007.

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

### Regulatory Impact Statement

#### STATUTORY AUTHORITY:

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

Education Law section 206 authorizes the Regents, any committee thereof, the Commissioner, the deputy and any associate and assistant commissioner of education and the counsel of the State Education Department to take testimony or hear proofs relating to their official duties, or in any matter which they may lawfully investigate.

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

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

Effective July 1, 2007, Education Law section 2857(1) was amended by section 7 of Part D-2 of Chapter 57 of the Laws of 2007 to require, among other things, school districts in which charter schools are located to hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter. In addition, a new Education Law section 2857(1-a) was enacted that provides that "[i]n the event the school district fails to conduct a public hearing, the board of regents shall conduct a public hearing to solicit comments from the community in connection with the issuance, revision, or renewal of a charter."

#### LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

**NEEDS AND BENEFITS:** The proposed amendment is necessary to delegate to the Commissioner of Education the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

#### COSTS:

(a) Costs to State government: none. The proposed amendment is necessary to delegate to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a), and will not impose any additional costs on the State beyond those inherent in the statute.

(b) Costs to local government: none. The proposed amendment does not impose any costs on school districts or charter schools. The proposed amendment merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

(c) Cost to private regulated parties: none. The proposed amendment does not affect any private regulated parties.

(d) Cost to regulating agency for implementation and continued administration of this rule: none. The proposed amendment merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). The proposed amendment will not impose any additional costs on the State Education Department beyond those inherent in the statute.

#### LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon school districts, charter schools or other local governments. It merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

#### PAPERWORK:

The proposed amendment does not impose any additional reporting, record keeping or other paperwork requirements upon school districts or charter schools. It merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

#### DUPLICATION:

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

#### ALTERNATIVES:

Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter was not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

#### FEDERAL STANDARDS:

There are no applicable Federal standards.

#### COMPLIANCE SCHEDULE:

The proposed amendment does not impose any compliance requirements or costs on charter schools, but merely delegates to the Commissioner the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

#### **Regulatory Flexibility Analysis**

##### Small Businesses:

The proposed amendment applies to school districts and charter schools, and will delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). The proposed amendment does not impose any economic impact, 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 Governments:

**EFFECT OF RULE:** The proposed rule applies to all school districts and charter schools in the State. There are currently 97 charter schools in existence.

#### COMPLIANCE REQUIREMENTS:

The proposed amendment does not establish any reporting, recordkeeping or other compliance requirements on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

#### PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or charter schools.

#### COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

#### MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or compliance costs on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

#### 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. Copies of the proposed amendment have been provided to each charter school for review and comment.

#### **Rural Area Flexibility Analysis**

##### TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and charter schools within the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not establish any reporting, recordkeeping or other compliance requirements, or impose any additional professional services requirements on school districts or charter schools in rural areas. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

##### COSTS:

The proposed amendment does not impose any compliance costs on school districts or charter schools in rural areas. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

##### MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or compliance costs on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

##### RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee. Comments on the proposed amendment were also solicited from school districts through the offices of the district superintendents of each supervisory district in the State. In addition, copies of the proposed rule have been provided to each charter school for review and comment.

#### **Job Impact Statement**

The proposed amendment applies to school districts and charter schools, and will delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have 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.

### **EMERGENCY RULE MAKING**

#### **Fiscal Maintenance of Effort**

**I.D. No.** EDU-32-07-00009-E

**Filing No.** 1193

**Filing date:** Oct. 29, 2007

**Effective date:** Oct. 29, 2007

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

**Action taken:** Addition of section 170.13 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided) and 305(1) and (2) and 2576(5-b); and L. 2007, ch. 57, part B, section 9

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, to require maintenance of local effort by certain specified school districts.

Education Law section 2576(5-b) requires each school district in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants to maintain their fiscal effort in support of education. The statute requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

The proposed rule was adopted at the July 25, 2007 Regents meeting as an emergency measure, effective July 31, 2007, in order to immediately establish a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, so that school districts subject to such requirement may timely align their budgets to comply with the statute's requirements for the 2007-2008 school year. A Notice of Proposed Rule Making was published in the *State Register* on August 8, 2007.

The proposed rule has been adopted as a permanent rule at the October 22-23, 2007 Regents meeting. Pursuant to the State Administrative Procedure Act section 203(1), the earliest the adopted rule can become effective is upon its publication in the *State Register* on November 14, 2007. However, the July emergency rule will expire on October 28, 2007, 90 days after its filing with the Department of State on July 31, 2007. A lapse in the rule's effectiveness could disrupt determinations of fiscal maintenance of effort pursuant to Education Law section 2576(5-b). A second emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

**Subject:** Fiscal maintenance of effort.

**Purpose:** To define "city funds" for purposes of determining maintenance of effort in cities having a population of 125,000 or more inhabitants and less than 1,000,000 inhabitants pursuant to Education Law, section

2576(5-b), including State and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

**Text of emergency rule:** Section 170.13 of the Regulations of the Commissioner of Education is added, effective October 29, 2007, as follows:

§ 170.13 Definition of "city funds" for purposes of determining maintenance of effort for cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants pursuant to Education Law section 2576(5-b).

For purposes of this section and Education Law section 2576(5-b), "city funds" shall mean funds of each city having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants derived from any source except:

- (a) funds contained within the capital budget;
- (b) funds from county sales tax revenues shared with such city;
- (c) funds derived from any federal source; and
- (d) funds derived from any state or private sources over which the city has no discretion, including:

- (1) gifts for specific purposes;
- (2) grants in aid for specific purposes; or
- (3) insurance proceeds authorized pursuant to Education Law section 1718(2) in addition to that which has been previously budgeted.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-32-07-00009-P, Issue of August 8, 2007. The emergency rule will expire December 27, 2007.

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

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

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

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 Department.

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

Education Law section 2576(5-b), as added by section 9 of Part B of Chapter 57 of the Laws of 2007, requires each school district in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants to maintain their fiscal effort in support of education. The statute requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

##### **LEGISLATIVE OBJECTIVES:**

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, by defining state and private sources over which the city has no discretion.

##### **NEEDS AND BENEFITS:**

The proposed rule is needed to implement the statutory requirements. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

State Education Department research on the maintenance of local effort in support of schools has documented that school districts tend to reduce local effort when they receive State Aid increases. Without a statutory requirement or formula structure that requires maintenance of local effort there is no way to ensure that State Aid increases provided for the purpose

of increasing student achievement will result in additional programs and services for students, rather than tax relief or the funding of other city services.

**COSTS:**

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to private, regulated parties: None.
- d. Costs to the Education Department of implementation and continuing compliance: None.

The rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any costs beyond those inherent in the statute. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

**LOCAL GOVERNMENT MANDATES:**

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on local governments. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

**PAPERWORK:**

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any reporting requirements beyond those inherent in the statute. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control. School districts will demonstrate compliance with the proposed rule through the submission of fiscal data submitted for the receipt of State aid.

**DUPLICATION:**

The proposed rule will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007.

**ALTERNATIVES:**

There were no significant alternatives and none were considered. Education Law section 2576(5-b) requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the statute's maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

**FEDERAL STANDARDS:**

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not exceed any minimum federal standards. Federal maintenance of effort requirements exist for specific federal funding programs, but there are no substantive federal standards that are applicable to the use of state funds for education.

**COMPLIANCE SCHEDULE:**

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007. The maintenance of effort requirements imposed on certain school districts are effective for school year 2007-08. School districts will submit data demonstrating they maintained their effort in relation to the prior school year in their annual financial reports filed with the State Education Department on September 1 of each year.

**Regulatory Flexibility Analysis**

**Small Businesses:**

The proposed amendment is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, relating to the calculation of fiscal maintenance of effort requirements for certain city school districts, by defining funds from state and private sources over which the city has no discretion. 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 Governments:**

**EFFECT OF RULE:**

The proposed rule applies to those four school districts in the State that have been determined to meet the statutory requirements in Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, necessitating compliance with the statute's maintenance of effort requirements. These are the large city school districts of Rochester, Syracuse, Buffalo and Yonkers.

**COMPLIANCE REQUIREMENTS:**

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any additional reporting, recordkeeping or other compliance requirements on affected school districts. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

**PROFESSIONAL SERVICES:**

Compliance with the proposed rule can be incorporated in existing district procedures for budgeting, accounting and reporting and does not necessitate any additional professional services.

**COMPLIANCE COSTS:**

The rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any costs beyond those inherent in the statute. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any additional technological requirements or costs on affected school districts. The rule merely establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

**MINIMIZING ADVERSE IMPACT:**

Education Law section 2576(5-b), as added by section 9 of Part B of Chapter 57 of the Laws of 2007, requires each school district in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants to maintain their fiscal effort in support of education. The statute requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

The proposed rule is necessary to implement Education Law section 2576(5-b) and is applicable to the four large city school districts of Rochester, Syracuse, Buffalo and Yonkers. 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 affected school districts from coverage by the rule. The development of the proposed rule took into account Department consultation with the large city districts over the years.

**LOCAL GOVERNMENT PARTICIPATION:**

Guidance memos to the regulated parties that are local governments – school districts and their component schools – were sent out from the Senior Deputy Commissioner for P-16 education of the State Education Department on April 4, and April 9, 2007. In these two documents, the Education Department sought the input, impact, questions and feedback of the proposed rule on districts as well as communicating in broad terms, the nature of the requirement. 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**

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by section 9 of Part B of Chapter 57 of the Laws of 2007, which requires each school district in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants to maintain their fiscal effort in support of education, and further requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

Accordingly, the proposed rule applies to the large city school districts of Rochester, Syracuse, Buffalo and Yonkers, and does not apply to any school districts 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 rule does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the proposed rule that it does not affect rural areas, no further measures 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 is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, relating to the calculation of fiscal maintenance of effort requirements for certain city school districts, by defining funds from state and private sources over which the city has no discretion. 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.

**EMERGENCY  
RULE MAKING**

**State Aid for Public Library Construction**

**I.D. No.** EDU-32-07-00011-E

**Filing No.** 1186

**Filing date:** Oct. 29, 2007

**Effective date:** Oct. 29, 2007

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

**Action taken:** Amendment of section 90.12 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 215 (not subdivided) and 273(5); and L. 2007, ch. 53, section 1, ch. 57, part B, section 4

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to ensure that the Commissioner's Regulations comply with recent amendments made to Education Law section 273-a by Chapter 57 of the Laws of 2007. Chapter 57 of the Laws of 2007 amended Education Law section 273-a to change the payment schedule for State aid for public library construction and renovation projects, appropriated pursuant to Chapter 53 of the Laws of 2007, to a 50/40/10 percent basis from a 90/10 percent basis. Chapter 53 of the Laws of 2007 appropriated \$14 Million for public library construction and renovation projects for State fiscal year 2007-2008.

The proposed amendment was adopted at the July 25, 2007 Regents meeting as an emergency measure, effective July 31, 2007, in order to ensure that the Commissioner's Regulations comply with Education Law section 273-a, as recently amended, and to ensure the timely implementation of public library construction and renovation projects in State fiscal year 2007-2008. A Notice of Proposed Rule Making was published in the *State Register* on August 8, 2007.

The proposed amendment was adopted as a permanent rule at the October 22-23, 2007 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest effective date of the adopted rule, if adopted at the October Regents meeting, is November 14, 2007, the date of publication of the Notice of Adoption in the *State Register*.

However, the July emergency rule will expire on October 28, 2007, 90 days after its filing with the Department of State on July 31, 2007. A lapse in the rule's effectiveness could delay implementation of public library construction projects until well into the 2007-2008 State fiscal year. Therefore, a second emergency adoption of the proposed amendment is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until the permanent rule takes effect on November 15, 2007.

**Subject:** State aid for public library construction and renovation projects.

**Purpose:** To prescribe eligibility requirements and criteria for applications for State aid for library construction and renovation projects, and conform the commissioner's regulations to Education Law, section 273-a, as recently amended by L. 2007, ch. 57.

**Text of emergency rule:** 1. Paragraph (5) of subdivision (a) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective October 29, 2007, as follows:

(5) Renovation means the overall improvement or conversion of an existing building, *exclusive of routine maintenance*, resulting in increased operational efficiency and economy.

2. Subdivision (c) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective October 29, 2007, as follows:

(c) Content of applications. Each application shall assure that:

(1) . . .

(2) the nonstate share of the cost of the project is or will be available[, that];

(3) the project has been started or will begin within 180 days after approval by the commissioner[,] and [that the project] will be completed promptly and in accordance with the application;

[(3)] (4) the approved project will be conducted in accordance with all applicable Federal, State, and local laws and regulations;

[(4)] (5) the project has not been completed prior to the date of the application;

[(5) for all new projects or] (6) where [otherwise] required by law, competitive bidding procedures will be followed; and

[(6)] (7) the premises constructed, acquired, renovated, rehabilitated or leased will be usable for library purposes for at least [20] 10 years from completion of the project.

3. Paragraph (1) of subdivision (e) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective October 29, 2007, as follows:

(1) Costs eligible for approval shall include:

(i) . . .

(ii) . . .

(iii) . . .

(iv) purchase and installation of initial equipment and furnishings *as a project component of subparagraphs (i), (ii) or (iii) of this paragraph;*

(v) *site preparation and grading as a project component of subparagraphs (i), (ii) or (iii) of this paragraph;*

(vi) *replacement of a library building's mechanicals, including, but not limited to, heating, ventilation, air conditioning, cooling, electrical, and plumbing systems;*

(vii) *replacement of permanent components of a library building, including, but not limited to, windows, doors, roofs, and lighting systems;*

(viii) *supervision of the construction, renovation or rehabilitation;*

and

(ix) such other costs as may be approved by the commissioner.

4. Paragraph (2) of subdivision (e) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective October 29, 2007, as follows:

(2) Costs ineligible for approval shall include, but shall not be limited to:

(i) . . .

(ii) . . .

(iii) . . .

(iv) purchase of books and other library materials; [and]

(v) landscaping; *and*

(vi) *routine maintenance.*

5. Subdivision (f) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective October 29, 2007, as follows:

(f) Schedule of payment of State aid for library construction. (1) [Ninety-percent] *Fifty-percent* payment of awarded State aid for approved costs of the project will be made after notification of applicant by the commissioner of approval for funding.

(2) *Forty percent of such aid shall be payable in the State fiscal year following the year in which funding was provided.*

(3) The 10-percent final payment will be made after submission of satisfactory evidence that the project has been completed *in accordance with the terms of the approved application* [according to the approved application and has been accepted by the applicant].

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-32-07-00011-P, Issue of August 8, 2007. The emergency rule will expire December 27, 2007.

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

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

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

Education Law section 215 authorizes the Board of Regents, the Commissioner of Education, or their representatives, to visit, examine and inspect schools or institutions under the educational supervision of the State and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports indicating the results of such examinations and inspections in a form prescribed by the Board of Regents and the Commissioner of Education.

Education Law section 273-a provides for State aid for projects for the acquisition, construction, renovation and rehabilitation of buildings of public libraries and public library systems chartered by the Regents of the State of New York or established by act of the Legislature, upon approval by the Commissioner of Education. Subdivision (5) of section 273-a authorizes the Commissioner of Education to adopt rules and regulations as are necessary to carry out the purposes and provisions of this section.

Section 1 of Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects approved pursuant to Education Law section 273-a.

Section 4 of Part B of Chapter 57 of the Laws of 2007 amended Education Law section 273-a to change the payment schedule for State aid for library construction and renovation projects from a 90/10 percent basis to a 50/40/10 percent basis. 50 percent of State aid shall be payable to each public library system or public library upon approval of the application. 40 percent shall be payable in the next State fiscal year. The remaining 10 percent shall be payable upon project completion.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement Education Law section 273-a, as amended by Chapter 57 of the Laws of 2007.

##### **3. NEEDS AND BENEFITS:**

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, so that the payment schedule of State aid for library construction is changed to a 50/40/10 percent basis from a 90/10 percent basis and further, so that funds for public library construction and renovation projects, appropriated pursuant to Chapter 53 of the Laws of 2007, are timely awarded, pursuant to statutory requirements, to eligible public libraries and public library systems. Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects.

##### **4. COSTS:**

(a) Costs to the State: none.

(b) Costs to local governments: none.

(c) Costs to private, regulated parties: none.

The proposed amendment relates to State aid for public library systems and public libraries and does not affect private parties.

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

The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 273-a, as amended by Chapter 57 of the Laws of 2007, and does not impose any additional costs on the State, local governments, or the State Education Department.

##### **5. LOCAL GOVERNMENT MANDATES:**

The proposed amendment concerns applications for State aid for library construction and applies to all public library systems and public libraries seeking such aid, including public libraries established by local

governments, but does not directly impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district, or other special district. The proposed amendment is needed to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a, as discussed in the Needs and Benefits section above.

##### **6. PAPERWORK:**

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 273-a, as amended by Chapter 57 of the Laws of 2007, and does not impose any additional paperwork requirements upon the State beyond those inherent in the statute. The proposed amendment substitutes a 50/40/10 percent payment schedule for a 90/10 percent payment schedule, which will result in additional paperwork for public library systems and public libraries in order to draw down their funds.

##### **7. DUPLICATION:**

The proposed amendment duplicates no existing State or federal requirements and is necessary to conform the Commissioner's Regulations to recent amendments made to Education Law section 273-a by Chapter 57 of the Laws of 2007.

##### **8. ALTERNATIVES:**

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

##### **9. FEDERAL STANDARDS:**

The proposed amendment does not exceed any minimum standard of the federal government.

##### **10. COMPLIANCE SCHEDULE:**

It is anticipated that public library systems and public libraries will be able to achieve compliance with these changes within two weeks from the adoption of the amended rule.

#### **Regulatory Flexibility Analysis**

##### **(a) Small Businesses:**

The proposed amendment concerns applications for State aid for library construction by public library systems and public libraries and does not impose any adverse economic impact, or any adverse reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### **(b) Local Governments:**

##### **EFFECT OF RULE:**

The proposed rule applies to public library systems and public libraries who seek State aid for library construction, including 395 public libraries established by local governments.

##### **COMPLIANCE REQUIREMENTS:**

The proposed rule applies to public library systems and public libraries who seek State aid for library construction, including those public libraries established by local governments, but does not directly impose any compliance requirements on local governments.

The proposed amendment is needed to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, so that the payment schedule of State aid for library construction is changed to a 50/40/10 percent basis from a 90/10 percent basis and further, so that funds for public library construction and renovation projects, appropriated pursuant to Chapter 53 of the Laws of 2007, are timely awarded, pursuant to statutory requirements, to eligible public library systems and public libraries. Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects.

##### **PROFESSIONAL SERVICES:**

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

##### **COMPLIANCE COSTS:**

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, and will not impose any additional compliance costs on local governments.

##### **ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

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

##### **MINIMIZING ADVERSE IMPACT:**

The proposed amendment is needed to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007. The proposed amendment applies to

public library systems and public libraries that seek State aid for library construction, including those public libraries established by local governments, but does not directly impose any compliance requirements or costs on local governments. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on public libraries and public library systems. The proposed amendment will permit public libraries greater flexibility in applying for grant funds.

#### LOCAL GOVERNMENT PARTICIPATION:

The recent legislation that provides \$14 Million in construction funding originated with the ten recommendations of the Regents Commission on Library Services. It is a component of the proposed New Century Libraries legislation, which was based on the recommendations made by the Commission after two years of studying the State's libraries, including 14 public meetings held throughout the State to solicit input from the public and the library community.

In addition, in 2003, staff of the New York State Library's Division of Library Development participated in a conference call with representatives of the Public Library System Directors Organization (PULISDO) and also attended the annual PULISDO meeting to discuss the construction program which resulted in suggestions for changing the program.

The proposed amendments to Regulation 90.12 are required by Education Law, and additional changes have been made to facilitate the application procedures at the recommendation of the State's public library systems.

#### Rural Area Flexibility Analysis

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public library systems and public libraries who seek State aid for library construction, including those located in the 44 rural counties having less than 200,000 inhabitants and in the 71 towns within urban counties having a population density of 150 persons per square mile or less.

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

The proposed amendment applies to public library systems and public libraries who seek State aid for library construction, including those public libraries located in rural areas. The proposed amendment is needed to conform the Commissioner's Regulations to recent amendments made to Education Law section 273-a. Chapter 57 of the Laws of 2007 amended section 273-a to change the payment schedule for State aid for library construction from a 90/10 percent basis to a 50/40/10 percent basis.

The proposed amendment does not impose any additional professional services requirements. The proposed amendment provides greater flexibility to public libraries and public library systems in applying for State aid for library construction, and does not impose any additional compliance requirement on public libraries or public library systems located in rural areas.

##### 3. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 273-a, as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on public libraries or public library systems located in rural areas.

##### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to public library systems and public libraries who seek State aid for library construction, including those public libraries and public library systems located in rural areas. The proposed amendment is needed to conform the Commissioner's Regulations to recent amendments made to Education Law section 273-a by Chapter 57 of the Laws of 2007. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on public libraries and public library systems.

The proposed amendment applies to public libraries and public library systems across the State, and accordingly, it was not possible to provide for a lesser standard or an emergency exemption for public libraries located in rural areas.

##### 5. RURAL AREA PARTICIPATION:

The recent legislation that provides \$14 Million in construction funding originated with the ten recommendations of the Regents Commission on Library Services. It is a component of the proposed New York Knowledge Initiative legislation and builds on the New Century Libraries proposal, which was based on the recommendations made by the Commission after two years of studying the State's libraries, including 14 public meetings held throughout the State to solicit input from the public and the library community.

In addition, in 2003, staff of the New York State Library's Division of Library Development participated in a conference call with representatives

of the Public Library System Directors Organization (PULISDO) and also attended the annual PULISDO meeting to discuss the construction program which resulted in suggestions for changing the program.

The proposed amendments to Regulation 90.12 are required by Education Law, and additional changes have been made to facilitate the application procedures at the recommendation of the State's public library systems.

#### Job Impact Statement

The proposed amendment concerns applications for State aid for library construction by public library systems and public libraries and will not have an adverse impact on job 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 measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

## EMERGENCY RULE MAKING

### Procedures for Public Hearings Concerning Charter Schools

**I.D. No.** EDU-32-07-00012-E

**Filing No.** 1189

**Filing date:** Oct. 29, 2007

**Effective date:** Oct. 29, 2007

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

**Action taken:** Addition of section 119.4 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1); and L. 2007, ch. 57, part D-2, section 7

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

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1).

Effective July 1, 2007, Education Law section 2857(1) was amended by section 7 of Part D-2 of Chapter 57 of the Laws of 2007 to require, among other things, school districts in which charter schools are located to hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter.

The proposed rule was adopted at the July 25, 2007 Regents meeting as an emergency measure, effective July 31, 2007, in order to immediately establish procedures for the conduct of charter school public hearings pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, so that school districts may timely conduct such hearings pursuant to statutory requirements during the 2007-2008 school year. A Notice of Proposed Rule Making was published in the *State Register* on August 8, 2007.

The proposed rule has been adopted as a permanent rule at the October 22-23, 2007 Regents meeting. Pursuant to the State Administrative Procedure Act section 203(1), the earliest the adopted rule can become effective is upon its publication in the *State Register* on November 14, 2007. However, the July emergency rule will expire on October 28, 2007, 90 days after its filing with the Department of State on July 31, 2007. A lapse in the rule's effectiveness could delay the scheduling and/or disrupt the conducting of charter school public hearings pursuant to Education Law section 2857(1-a).

A second emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

**Subject:** Procedures for public hearings concerning charter schools pursuant to Education Law, section 2857(1-a).

**Purpose:** To establish procedures for the conduct of public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law, section 2857(1).

**Text of emergency rule:** Section 119.4 of the Regulations of the Commissioner of Education is added, effective October 29, 2007, as follows:

§ 119.4 Hearings prior to the issuance, revision, or renewal of a charter school pursuant to Education Law section 2857(1).

*Within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty-day period. The school district shall, at the time of its dissemination, provide the State Education Department with a copy of the public hearing notice. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within 15 business days of the hearing.*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-32-07-00012-P, Issue of August 8, 2007. The emergency rule will expire December 27, 2007.

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

#### **Regulatory Impact Statement**

##### STATUTORY AUTHORITY:

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

Education Law section 206 authorizes the Regents, any committee thereof, the Commissioner, the deputy and any associate and assistant commissioner of education and the counsel of the State Education Department to take testimony or hear proofs relating to their official duties, or in any matter which they may lawfully investigate.

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

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

Education Law section 2857(1), as amended by section 7 of Part D-2 of Chapter 57 of the Laws of 2007, provides that prior to the issuance, revision, or renewal of a charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing must be held in the community potentially impacted by the proposed charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold such hearing.

##### LEGISLATIVE OBJECTIVES:

Consistent with the statutory authority set forth above, the proposed rule will establish procedures for the conduct of charter school public hearings by the school district pursuant to Education Law section 2857(1).

##### NEEDS AND BENEFITS:

The proposed rule is necessary to prescribe procedures for the conduct of charter school public hearings by a school district to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). It has been determined that the procedures set forth in the proposed rule will provide for the most efficient, thorough and expeditious means to conduct such hearings.

##### COSTS:

(a) Costs to State government: none. The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on the State beyond those inherent in the statute.

(b) Costs to local government: none. The proposed rule does not impose any additional costs on school districts beyond those inherent in Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007. Such costs would be associated with school districts' submission of copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department.

(c) Cost to private regulated parties: none. The proposed rule does not affect any private regulated parties.

(d) Cost to regulating agency for implementation and continued administration of this rule: none. The proposed rule will not impose any additional costs on the State beyond those inherent in Education Law section 2857, as amended by Chapter 57 of the Laws of 2007.

##### LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional program, service, duty or responsibility upon school districts beyond those inherent in the statute.

Consistent with the statute, proposed section 119.4 provides that within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty day period. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within five business days of the hearing.

##### PAPERWORK:

The school district shall, at the time of its dissemination, provide the State Education Department with a copy of the public hearing notice. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within 15 business days of the hearing.

##### DUPLICATION:

The proposed rule does not duplicate any existing State or Federal requirements.

##### ALTERNATIVES:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1). There are no significant alternatives and none were considered.

##### FEDERAL STANDARDS:

There are no applicable Federal standards.

##### COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed rule by its effective date.

#### **Regulatory Flexibility Analysis**

##### Small Businesses:

The proposed rule applies to school districts and charter schools, and will establish procedures for the conduct of charter school public hearings by the school district to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). The proposed rule does not impose any economic impact, or other compliance requirements on small businesses.

Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

**Local Governments:**

**EFFECT OF RULE:**

The proposed rule applies to all school districts and charter schools in the State. There are currently 97 charter schools in existence.

**COMPLIANCE REQUIREMENTS:**

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools beyond those inherent in the statute.

Consistent with the statute, proposed section 119.4 provides that within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the forgoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty day period. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within five business days of the hearing.

**PROFESSIONAL SERVICES:**

The proposed rule does not impose any additional professional services requirements on school districts or charter schools.

**COMPLIANCE COSTS:**

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on school districts or charter schools beyond those inherent in the statute. Such costs would be associated with school districts' submission of copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed rule does not impose any additional compliance costs on school districts or charter schools beyond those inherent in the statute. The proposed rule does not impose any additional technological requirements on school districts or charter schools.

**MINIMIZING ADVERSE IMPACT:**

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007. 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 affected school districts from coverage by the rule. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on school districts and charter schools.

**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. Copies of the proposed amendment have been provided to each charter school for review and comment.

**Rural Area Flexibility Analysis**

**TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment applies to all school districts and charter schools within the State, including those located in the 44 rural counties

with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools in rural areas beyond those inherent in the statute.

Consistent with the statute, proposed section 119.4 provides that within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the forgoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty day period. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within five business days of the hearing.

The proposed rule does not impose any additional professional services requirements on school districts or charter schools in rural areas.

**COSTS:**

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on school districts or charter schools in rural areas beyond those inherent in the statute. Such costs would be associated with school districts' submission of copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department.

**MINIMIZING ADVERSE IMPACT:**

The proposed rule is necessary to implement Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007 by establishing procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing requirements or to exempt school districts or charter schools from coverage by the rule. Furthermore, because this amendment implements statutory provisions that are applicable to school districts and charter schools across the State, it was not possible to provide for a lesser standard or an exemption for those located in rural areas. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on school districts and charter schools.

**RURAL AREA PARTICIPATION:**

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee. In addition, copies of the proposed rule have been provided to each charter school for review and comment.

**Job Impact Statement**

The proposed rule applies to school districts and charter schools, and will establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). The proposed rule 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.

## EMERGENCY RULE MAKING

### Excelsior Scholars Program

**I.D. No.** EDU-33-07-00012-E

**Filing No.** 1188

**Filing date:** Oct. 29, 2007

**Effective date:** Oct. 29, 2007

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

**Action taken:** Addition of sections 100.14 and 100.15 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2) and sections 3641-a(1), (2) and (3) and 3641-b (not subdivided), as added by L. 2007, ch. 57, part B, section 39

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

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to implement Education Law sections 3641-a and 3641-b, as added by Chapter 57 of the Laws of 2007, to establish Excelsior scholars programs for grade seven mathematics and science students and grants for summer institutes for mathematics and science teachers.

Education Law section 3641-a provides that the Commissioner shall establish an Excelsior Scholars program for grade seven mathematics and science students, and award grants on a competitive basis to public and independent colleges and universities to conduct summer programs providing advanced coursework in mathematics and science to students designated as Excelsior Scholars.

Education Law section 3641-b, as added by Chapter 57 of the Laws of 2007, provides that the Commissioner shall establish a program of competitively awarded grants to public and independent colleges and universities offering teacher education programs, in partnership with school districts, to conduct summer institutes for teachers of science and mathematics in grades five through eight in middle, junior high, intermediate or junior/senior high schools with priority given as practicable to teachers in schools identified as schools in need of improvement or in corrective action or restructuring status, schools under registration review or schools requiring academic progress. The institutes shall be designed to advance the content knowledge and pedagogy of participating science and mathematics teachers and shall, to the extent practicable, be aligned and integrated with programs offered to Excelsior Scholars pursuant to Education Law section 3641-a.

Since publication of a Notice of Proposed Rule Making in the State Register on August 15, 2007, substantial revisions have been made to the proposed rule and a Notice of Revised Rule Making will be published in the State Register on October 24, 2007. Pursuant to State Administrative Procedure Act (SAPA) section 202(4-a), the revised rule cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the State Register. Since the Board of Regents meets at fixed intervals, and no Regents meeting is scheduled for November 2007, the earliest the proposed amendment can be adopted by regular action, after expiration of the 30-day public comment period for a revised rule making, is the December 13-14, 2007 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest the proposed rule can become effective, if adopted at the December Regents meeting, is upon its publication in the State Register on January 2, 2008.

However, in order to ensure the timely summer 2008 implementation of Excelsior Scholars programs and summer institutes for mathematics and science teachers, the State Education Department has determined that the Department should issue requests for proposals (RFPs) in October 2007, so that interested public and independent colleges and universities seeking to administer the programs have sufficient time to prepare and submit their proposals in response to the RFPs, have their proposals reviewed and approved by the Department and Office of the State Comptroller, receive the grant awards, communicate with school districts to recruit students and teachers for the programs, and notify nominees of their acceptance into the programs. Delaying the proposed rule until January 2008 would severely shorten the timelines within which these activities must occur and could jeopardize the timely implementation of the programs in the summer of 2008.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to immediately establish criteria for the Excelsior Scholars program and grants for summer institutes so that requests for proposals with respect to such programs may be issued in

October 2007 and thereby ensure the programs may be timely implemented during the summer of 2008.

**Subject:** Excelsior Scholars Program and grants for summer institutes for mathematics and science teachers.

**Purpose:** To establish criteria for the award of grants for the Excelsior Scholars Program pursuant to Education Law, section 3641-a and grants for summer institutes for mathematics and science teachers pursuant to Education Law, section 3641-b.

**Text of emergency rule:** 1. Section 100.14 of the Regulations of the Commissioner of Education is added, effective October 30, 2007, as follows:

§ 100.14 *Excelsior scholars programs for grade seven mathematics and science students.*

(a) *Purpose.* The purpose of this section is to establish requirements for summer programs for high performing students in mathematics and science who have completed seventh grade that are offered pursuant to Education Law section 3641-a.

(b) *Definitions.* As used in this section:

(1) "Advanced coursework" means advanced instruction in mathematics and science that leads to attainment of the State learning standards in mathematics and science at the commencement level.

(2) "Eligible student" means a student nominated by the superintendent to participate in a summer program administered pursuant to this section who:

(i) will have completed seventh grade prior to the start of such summer program;

(ii) has demonstrated distinguished work in mathematics and science as determined by multiple measures, including, but not limited to:

(a) the student has maintained a grade point average of 90 or above in mathematics and science in grades five, six and seven; and

(b) has scored at level four on the state assessment in mathematics in grades five and six;

(iii) has received recommendations from at least one teacher of mathematics and at least one teacher of science who have taught such student in grades five, six and/or seven; and

(iv) has written consent from a parent or person in parental relation to participate in such summer program following completion of seventh grade.

(3) "Excelsior scholars" means students who have successfully completed a summer program of advanced coursework during the summer following the completion of seventh grade administered in accordance with this section.

(4) "Other high performing student" means a student nominated by the superintendent to participate in a summer program administered pursuant to this section who:

(i) will have completed seventh grade prior to the start of such summer program;

(ii) has demonstrated excellent work in mathematics and science as determined by multiple measures, including, but not limited to:

(a) maintaining a grade point average of 90 or above in mathematics or science in grades five, six and seven;

(b) scoring at level four on a state assessment in mathematics in either grades five or six;

(iii) has scored at level four on the state assessment in English language arts in grades five and six;

(iv) has received a recommendation from at least two of the following: a teacher of mathematics, a teacher of science, or a teacher of English language arts who have taught such student in grades five, six and/or seven; and

(v) has written consent from a parent or person in parental relation to participate in such summer program following completion of seventh grade.

(5) "Centers of Excellence in Technology" shall include those centers identified through the State's economic development agency to support State research facilities and other technology and biotechnology capital projects.

(c) The superintendent may nominate up to ten percent of a school's eligible grade seven students to participate in the programs described in this section. The superintendent shall nominate equal numbers of male and female students, as practicable.

(d) Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities to administer summer programs as described in this section. Such proposals shall be in a format, and

submitted pursuant to a timeline, as prescribed by the commissioner and shall include, but not be limited to, the following:

(1) a description of the process used to promote the Excelsior Scholars program among local school districts and to engage in student outreach;

(2) a description of the selection process and criteria, which shall be based on demonstrated academic achievement, used by the college or university to review and select eligible students and, where applicable, other high performing students, from those nominated for participation in the program. Such selection process and criteria shall ensure:

(i) the selection of students who have demonstrated the highest level of academic achievement in mathematics and science; and

(ii) a balanced number of male and female participants, as practicable;

(3) a description of the advanced coursework to be provided to such students, including how such coursework is aligned with the State learning standards;

(4) a description of the academic qualifications of the faculty who will provide the advanced coursework to students participating in the program, and programmatic capacity of the site and staff; and

(5) a description of the criteria to be used to determine whether such students have successfully completed the program.

(e) Competitive grants will be awarded to eligible public and independent colleges and universities to implement program(s) pursuant to this section based on, but not limited to, the following criteria:

(1) the provision of appropriate advanced coursework and the program's alignment with the State learning standards;

(2) the extent to which participation was solicited through student outreach and program promotion;

(3) the expertise of faculty and programmatic capacity of site and staff;

(4) coordination with programs offered by the centers of excellence in technology, to the extent practicable; and

(5) the availability of appropriated funds for such purpose.

2. Section 100.15 of the Regulations of the Commissioner of Education is added, effective October 30, 2007, as follows:

§ 100.15 Summer institutes for mathematics and science teachers in middle grades five through eight.

(a) Purpose. The purpose of this section is to establish requirements for a competitive grant program to public and independent colleges and universities offering teacher education programs, in partnership with school districts, to conduct summer institutes for teachers of mathematics and science pursuant to Education Law section 3641-b.

(b) Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities offering teacher education programs, registered pursuant to section 52.21 of this Title, that partner with school districts to conduct summer institutes for teachers of mathematics and science in grades five through eight in middle schools, junior high schools, intermediate schools or junior/senior high schools.

(1) Such proposals shall be in a format, and submitted pursuant to a timeline, as prescribed by the commissioner and shall include a description of how the program will advance the content knowledge and pedagogy of participating teachers in the areas of mathematics and science, including, but not limited to, how the program is:

(i) aligned to State learning standards for mathematics and science; and

(ii) aligned and integrated with programs offered to Excelsior Scholars pursuant to the requirements of section 100.14 of this Part, to the extent practicable, as well as with other State and federal programs with similar purposes.

(2) Teachers shall be selected for participation in such summer institutes by principals who shall give priority to teachers who meet the following criteria:

(i) first and second year teachers of grades five through eight;

(ii) teachers who are changing assignments and would benefit from professional development to improve student learning; and

(iii) teachers who have been identified as needing additional professional development in building content knowledge in mathematics and science and understanding of pedagogy.

(c) Competitive grants will be awarded to public and independent colleges and universities submitting a proposal pursuant to subdivision (b) of this section based on, but not limited to, the following criteria:

(1) the program is aligned to the State learning standards for mathematics and science;

(2) the program is designed to advance the content knowledge and pedagogy of participating mathematics and science teachers based on local measures of need assessment;

(3) the program is aligned and integrated with programs offered to Excelsior Scholars pursuant to the requirements of section 100.14 of this Part, to the extent practicable, as well as other State and federal programs with similar purpose; and

(4) priority is given, as practicable, to teachers in schools identified as schools in need of improvement, corrective action or restructuring status, schools under registration review or schools requiring academic progress.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-33-07-00012-P, Issue of August 15, 2007. The emergency rule will expire January 26, 2008.

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

**Regulatory Impact Statement**

**STATUTORY AUTHORITY:**

Education Law section 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 215 authorizes the Board of Regents, the Commissioner or their representatives to visit, examine, and inspect schools or other educational institutions, and require and verify reports from those entities.

Education Law 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 3641-a, as added by Chapter 57 of the Laws of 2007, provides that the Commissioner shall establish an Excelsior Scholars program for grade seven mathematics and science students, and award grants on a competitive basis to public and independent colleges and universities to conduct summer programs providing advanced coursework in mathematics and science to students designated as Excelsior Scholars. The statute requires the Commissioner to prescribe by regulation the maximum number of students that may be nominated by each school, which shall include equal numbers of male and female students. The statute also provides that the Commissioner's regulations shall provide for coordination of the program with the centers for excellence in technology and the programs offered by such centers, to the extent practicable.

Education Law section 3641-b, as added by Chapter 57 of the Laws of 2007, provides that the Commissioner shall establish a program of competitively awarded grants to public and independent colleges and universities offering teacher education programs, in partnership with school districts, to conduct summer institutes for teachers of science and mathematics in grades five through eight in middle, junior high, intermediate or junior/senior high schools with priority given as practicable to teachers in schools identified as schools in need of improvement or in corrective action or restructuring status, schools under registration review or schools requiring academic progress. The institutes shall be designed to advance the content knowledge and pedagogy of participating science and mathematics teachers and shall, to the extent practicable, be aligned and integrated with programs offered to Excelsior Scholars pursuant to Education Law section 3641-a.

**LEGISLATIVE OBJECTIVES:**

The proposed rule is consistent with the above statutory authority of the Commissioner to establish criteria for the award of grants for the Excelsior Scholars program for high performing students in mathematics and science who have completed seventh grade and grants for summer institutes for teachers of mathematics and science in middle grades five through eight.

**NEEDS AND BENEFITS:**

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007. The proposed rule establishes criteria for the award of grants for the Excelsior Scholars summer programs for high performing students in mathematics and science who have completed seventh grade, and grants for summer institutes for teachers of mathematics and science in grades five through eight in middle schools, junior high schools, intermediate schools or junior/senior high schools. Superintendents will be responsible for nominating students to participate in summer programs. Students who successfully complete such summer programs will be certified by the Governor of the State of New York as Excelsior Scholars. Principals will be responsible for nominating teachers of mathematics and science in middle grades five through eight to participate in summer institutes.

**COSTS:**

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, and does not impose any additional costs beyond those inherent in the statute. Participation in the Excelsior Scholars program and the grant program for summer institutes for teachers of mathematics and science is voluntary.

**LOCAL GOVERNMENT MANDATES:**

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on school districts or local governments. Participation in the Excelsior Scholars program and the grant program for summer institutes for teachers of mathematics and science is voluntary.

**PAPERWORK:**

The proposed rule provides the opportunity for superintendents to nominate students, and principals to nominate teachers, to participate in summer programs and institutes for mathematics and science, which necessitate the submission of written applications and supporting recommendations.

The superintendent of schools may nominate up to ten percent of a school's eligible grade seven students to participate in the Excelsior Scholars program. The superintendent shall nominate equal numbers of male and female students, as practicable.

Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities to administer an Excelsior Scholars program. Such proposals shall be in a format, and submitted pursuant to a timeline, as prescribed by the commissioner and shall include, but not be limited to, the following:

- (1) a description of the process used to promote the Excelsior Scholars program among local school districts and to engage in student outreach;
- (2) a description of the selection process and criteria, which shall be based on demonstrated academic achievement, used by the college or university to review and select eligible students and, where applicable, other high performing students, from those nominated for participation in the program. Such selection process and criteria shall ensure:
  - (i) the selection of students who have demonstrated the highest level of academic achievement in mathematics and science; and
  - (ii) a balanced number of male and female participants, as practicable;
- (3) a description of the advanced coursework to be provided to such students, including how such coursework is aligned with the State learning standards;
- (4) a description of the academic qualifications of the faculty who will provide the advanced coursework to students participating in the program, and programmatic capacity of the site and staff; and
- (5) a description of the criteria to be used to determine whether such students have successfully completed the program.

Teachers shall be selected for participation in summer institutes for teachers of mathematics and science for middle grades five through eight by principals who shall give priority to teachers who meet the following criteria:

- (1) first and second year teachers of grades five through eight;
- (2) teachers who are changing assignments and would benefit from professional development to improve student learning; and

(3) teachers who have been identified as needing additional professional development in building content knowledge in mathematics and science and understanding of pedagogy.

Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities offering teacher education programs, registered pursuant to section 52.21 of this Title, that partner with school districts to conduct summer institutes for teachers of mathematics and science in grades five through eight in middle schools, junior high schools, intermediate schools or junior/senior high schools.

(1) Such proposals shall be in a format, and submitted pursuant to a timeline, as prescribed by the commissioner and shall include a description of how the program will advance the content knowledge and pedagogy of participating teachers in the areas of mathematics and science, including, but not limited to, how the program is:

- (i) aligned to State learning standards for mathematics and science; and
- (ii) aligned and integrated with programs offered to Excelsior Scholars pursuant to the requirements of section 100.14 of this Part, to the extent practicable, as well as with other State and federal programs with similar purposes.

Participating colleges and universities awarded grant funding may require additional paperwork from districts depending on the recruitment, design, and implementation of the programs and institutes.

**DUPLICATION:**

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, and 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:**

School districts, colleges, and universities will be given the opportunity to comply with a schedule based upon adoption of the regulations in October 2007 and issuance of the related request for proposal (RFP). It is anticipated the RFP will be issued in the fall of 2007, contracts will be awarded in late 2007 or early 2008, recruitment of participants will occur in early 2008, and programs will run in the summer of 2008.

**Regulatory Flexibility Analysis**

**Small businesses:**

The proposed rule establishes requirements for the Excelsior Scholars program for high performing students in mathematics and science who have completed seventh grade pursuant to Education Law section 3641-a, and requirements for the grant program for Summer Institutes for Mathematics and Science Teachers in grades five through eight in middle, junior high, intermediate or junior/senior high schools pursuant to Education Law section 3641-b. 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 business, 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 all public school districts within the state who choose to partner with public and independent colleges and universities for purposes of conducting an Excelsior Scholars program pursuant to Education Law section 3641-a and/or conducting a Summer Institute for Mathematics and Science Teachers pursuant to Education Law section 3641-b.

**COMPLIANCE REQUIREMENTS:**

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, by establishing criteria for the Excelsior Scholars summer programs for high performing students in mathematics and science who have completed seventh grade, and for the grant program for Summer Institutes for Mathematics and Science Teachers. The proposed rule does not impose any additional reporting, record keeping or other compliance requirements on school districts. Participation in the Excelsior Scholars program and the grant program for Summer Institutes for Mathematics and Science Teachers is voluntary.

The proposed rule provides the opportunity for superintendents to nominate students, and principals to nominate teachers, to participate in

summer programs and institutes for mathematics and science, which necessitate the submission of written applications and supporting recommendations.

The superintendent of schools may nominate up to ten percent of a school's eligible grade seven students to participate in the Excelsior Scholars program. The superintendent shall nominate equal numbers of male and female students, as practicable.

Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities to administer an Excelsior Scholars program. Such proposals shall be in a format, and submitted pursuant to a timeline, as prescribed by the commissioner and shall include, but not be limited to, the following:

(1) a description of the process used to promote the Excelsior Scholars program among local school districts and to engage in student outreach;

(2) a description of the selection process and criteria, which shall be based on demonstrated academic achievement, used by the college or university to review and select eligible students and, where applicable, other high performing students, from those nominated for participation in the program. Such selection process and criteria shall ensure:

(i) the selection of students who have demonstrated the highest level of academic achievement in mathematics and science; and

(ii) a balanced number of male and female participants, as practicable;

(3) a description of the advanced coursework to be provided to such students, including how such coursework is aligned with the State learning standards;

(4) a description of the academic qualifications of the faculty who will provide the advanced coursework to students participating in the program, and programmatic capacity of the site and staff; and

(5) a description of the criteria to be used to determine whether such students have successfully completed the program.

Teachers shall be selected for participation in Summer Institutes for Mathematics and Science Teachers by principals who shall give priority to teachers who meet the following criteria:

(1) first and second year teachers of grades five through eight;

(2) teachers who are changing assignments and would benefit from professional development to improve student learning; and

(3) teachers who have been identified as needing additional professional development in building content knowledge in mathematics and science and understanding of pedagogy.

Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities offering teacher education programs, registered pursuant to section 52.21 of this Title, that partner with school districts to conduct Summer Institutes for Mathematics and Science Teachers in grades five through eight in middle schools, junior high schools, intermediate schools or junior/senior high schools.

(1) Such proposals shall be in a format, and submitted pursuant to a timeline, as prescribed by the commissioner and shall include a description of how the program will advance the content knowledge and pedagogy of participating teachers in the areas of mathematics and science, including, but not limited to, how the program is:

(i) aligned to State learning standards for mathematics and science; and

(ii) aligned and integrated with programs offered to Excelsior Scholars pursuant to the requirements of section 100.14 of this Part, to the extent practicable, as well as with other State and federal programs with similar purposes.

Participating colleges and universities awarded grant funding may require additional paperwork from districts depending on the recruitment, design, and implementation of the programs and institutes.

**PROFESSIONAL SERVICES:**

The proposed rule imposes no additional professional services requirements on school districts.

**COMPLIANCE COSTS:**

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, and does not impose any additional costs on school districts beyond those inherent in the statute. Participation in the Excelsior Scholars program and the grant program for Summer Institutes for Mathematics and Science Teachers is voluntary.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed rule imposes no additional costs or new technological requirements on school districts.

**MINIMIZING ADVERSE IMPACT:**

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, by establishing requirements for the Excelsior Scholars summer programs for high performing students in mathematics and science who have completed seventh grade, and requirements for Summer Institutes for Mathematics and Science Teachers for middle grades five through eight. The proposed rule does not impose any additional reporting, record keeping or other compliance requirements or costs on school districts. Participation in the Excelsior Scholars program and the grant program for Summer Institutes for Mathematics and Science Teachers is voluntary.

**LOCAL GOVERNMENT PARTICIPATION:**

Comments on the proposed rule 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 rule applies to all public school districts and public and independent colleges and universities within the State who choose to participate in an Excelsior Scholars program pursuant to Education Law section 3641-a and/or a Summer Institute for Mathematics and Science Teachers pursuant to Education Law section 3641-b, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, by establishing criteria for the Excelsior Scholar summer program for high performing students in mathematics and science who have completed seventh grade, and for the grant program for Summer Institutes for Mathematics and Science Teachers in grades five through eight in middle, junior high, intermediate or junior/senior high schools. The proposed rule does not impose any additional reporting, record keeping or other compliance requirements on school districts in rural areas. Participation in the Excelsior Scholars program and the grant program for Summer Institutes for Mathematics and Science Teachers is voluntary. The proposed rule imposes no new professional services requirements on school districts in rural areas.

The proposed rule provides the opportunity for superintendents to nominate students, and principals to nominate teachers, to participate in summer programs and institutes for mathematics and science, which necessitate the submission of written applications and supporting recommendations.

The superintendent of schools may nominate up to ten percent of a school's eligible grade seven students to participate in the Excelsior Scholar program. The superintendent shall nominate equal numbers of male and female students, as practicable.

Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities to administer an Excelsior Scholars program. Such proposals shall be in a format, and submitted pursuant to a timeline, as prescribed by the commissioner and shall include, but not be limited to, the following:

(1) a description of the process used to promote the Excelsior Scholars program among local school districts and to engage in student outreach;

(2) a description of the selection process and criteria, which shall be based on demonstrated academic achievement, used by the college or university to review and select eligible students and, where applicable, other high performing students, from those nominated for participation in the program. Such selection process and criteria shall ensure:

(i) the selection of students who have demonstrated the highest level of academic achievement in mathematics and science; and

(ii) a balanced number of male and female participants, as practicable;

(3) a description of the advanced coursework to be provided to such students, including how such coursework is aligned with the State learning standards;

(4) a description of the academic qualifications of the faculty who will provide the advanced coursework to students participating in the program, and programmatic capacity of the site and staff; and

(5) a description of the criteria to be used to determine whether such students have successfully completed the program.

Teachers shall be selected for participation in Summer Institutes for Mathematics and Science Teachers by principals who shall give priority to teachers who meet the following criteria:

- (1) first and second year teachers of grades five through eight;
- (2) teachers who are changing assignments and would benefit from professional development to improve student learning; and
- (3) teachers who have been identified as needing additional professional development in building content knowledge in mathematics and science and understanding of pedagogy.

Subject to the availability of funds appropriated for such purpose, the commissioner shall annually issue a request for proposals to public and independent colleges and universities offering teacher education programs, registered pursuant to section 52.21 of this Title, that partner with school districts to conduct Summer Institutes for Mathematics and Science Teachers in grades five through eight in middle schools, junior high schools, intermediate schools or junior/senior high schools.

(1) Such proposals shall be in a format, and submitted pursuant to a timeline, as prescribed by the commissioner and shall include a description of how the program will advance the content knowledge and pedagogy of participating teachers in the areas of mathematics and science, including, but not limited to, how the program is:

- (i) aligned to State learning standards for mathematics and science; and
- (ii) aligned and integrated with programs offered to Excelsior Scholars pursuant to the requirements of section 100.14 of this Part, to the extent practicable, as well as with other State and federal programs with similar purposes.

Participating colleges and universities awarded grant funding may require additional paperwork from districts depending on the recruitment, design, and implementation of the programs and institutes.

#### COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, and does not impose any additional costs on school districts beyond those inherent in the statute. Participation in the Excelsior Scholars program and the grant program for Summer Institutes for Mathematics and Science Teachers is voluntary.

#### MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007, by establishing requirements for the Excelsior Scholars summer programs for high performing students in mathematics and science who have completed seventh grade, and requirements for Summer Institutes for Mathematics and Science Teachers. Because the proposed rule implements statutory provisions that are applicable to school districts across the State, it was not possible to provide for a lesser standard or an exemption for school districts in rural areas. The proposed rule does not impose any additional reporting, record keeping or other compliance requirements or costs on school districts. Participation in the Excelsior Scholars program and the grant program for Summer Institutes for Mathematics and Science Teachers is voluntary.

#### RURAL AREA PARTICIPATION:

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

#### Job Impact Statement

The proposed rule relates to the establishment of requirements for the Excelsior Scholars program for high performing students in mathematics and science who have completed seventh grade, and requirements for grants for Summer Institutes for Mathematics and Science Teachers in grades five through eight in middle, junior high, intermediate or junior/senior high schools, and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed rule that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

## NOTICE OF ADOPTION

### Administration of Ability-to-Benefit Tests for Eligibility for Awards and Loans

**I.D. No.** EDU-26-07-00010-A  
**Filing No.** 1191  
**Filing date:** Oct. 29, 2007  
**Effective date:** Nov. 15, 2007

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

**Action taken:** Addition of section 145-2.15 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 215 (not subdivided) and 661(4); and L. 2007, ch. 57, part E-1, sections 1 and 2  
**Subject:** Administration of ability-to-benefit tests for eligibility for awards.

**Purpose:** To identify certain ability-to-benefit tests and the passing scores for such tests that the Board of Regents approves for purposes of eligibility for awards under section 661 of the Education Law. The proposed amendment also establishes criteria that the department will utilize to determine if an approved ability-to-benefit test is independently administered; in order to implement the requirements of L. 2007, ch. 57.

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-26-07-00010-P, Issue of June 27, 2007.

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

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

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

### Delegation of Authority Concerning Charter Schools

**I.D. No.** EDU-32-07-00007-A  
**Filing No.** 1183  
**Filing date:** Oct. 29, 2007  
**Effective date:** Nov. 15, 2007

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

**Action taken:** Amendment of section 3.16 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1) and (1-a); and L. 2007, ch. 57, part D-2, section 7

**Subject:** Delegation of authority to conduct and hold public hearings concerning charter schools under Education Law, section 2857(1-a).

**Purpose:** To delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law, section 2857(1-a).

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-32-07-00007-P, Issue of August 8, 2007.

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

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

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

### Civil Enforcement Proceedings

**I.D. No.** EDU-32-07-00008-A  
**Filing No.** 1184  
**Filing date:** Oct. 29, 2007  
**Effective date:** Nov. 15, 2007

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

**Action taken:** Addition of Part 31 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 6506(1); 6512(1); 6513(1); and 6516(1), (2), (3), (4), (5), (6) and (7)

**Subject:** Civil enforcement proceedings for the unauthorized practice of the professions and the unauthorized use of a professional title.

**Purpose:** To implement Education Law, section 6516, as added by chapter 615 of the Laws of 2003, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests, stay requests, the contents of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-32-07-00008-P, Issue of August 8, 2007.

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

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

#### Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on August 8, 2007, the State Education Department received the following comment on the proposed addition to the Rules of the Board of Regents.

#### COMMENT:

Two letters were received in support of the proposed addition to the Rules of the Board of Regents, specifically in support of the State Education Department's initiative to prosecute the unauthorized practice of a profession and unauthorized use of a professional title.

#### DEPARTMENT RESPONSE:

Section 6516 of the Education Law authorizes the State Education Department to issue cease and desist orders, conduct administrative proceedings, impose civil penalties, and order restitution in cases of the unauthorized practice of a profession or unauthorized use of a professional title. Part 31 of the Rules of the Board of Regents implements the provisions of Section 6516 of the Education Law by specifying the requirements for the submission of complaints, investigations, hearing requests and stay requests; the contents of a cease and desist order; the standards for the imposition of civil penalties and restitution; and the procedures for hearings and appeals.

### NOTICE OF ADOPTION

#### Fiscal Maintenance of Effort

**I.D. No.** EDU-32-07-00009-A

**Filing No.** 1194

**Filing date:** Oct. 29, 2007

**Effective date:** Nov. 15, 2007

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

**Action taken:** Addition of section 1709.13 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided) and 305(1) and (2) and 2576(5-b); and L. 2007, ch. 57, part B, section 9

**Subject:** Fiscal maintenance of effort.

**Purpose:** To define "city funds" for purposes of determining maintenance of effort in cities having a population of 125,000 or more inhabitants and less than one million inhabitants pursuant to Education Law, section 2576(5-b), including State and private funding sources over which the city has not discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-32-07-00009-P, Issue of August 8, 2007.

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

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

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Requirements Related to Licensure as a Licensed Clinical Social Worker

**I.D. No.** EDU-32-07-00010-A

**Filing No.** 1185

**Filing date:** Oct. 29, 2007

**Effective date:** Nov. 15, 2007

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

**Action taken:** Amendment of sections 74.2, 74.3, 74.4 and 74.6 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 6501, 6504, 6507(2)(a), 7704(2)(c), (d) and 7705

**Subject:** Requirements relating to licensure as a licensed clinical social worker, limited permits to practice licensed clinical social work and the supervision of clinical social work services provided by a licensed master social worker.

**Purpose:** To revise the requirements for admission to an examination for licensure as a licensed clinical social worker. The amendment also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the supervised experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work.

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-32-07-00010-P, Issue of August 8, 2007.

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

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

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### State Aid for Public Library Construction

**I.D. No.** EDU-32-07-00011-A

**Filing No.** 1187

**Filing date:** Oct. 29, 2007

**Effective date:** Nov. 15, 2007

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

**Action taken:** Amendment of section 90.12 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 215 (not subdivided) and 273-a(5); L. 2007, ch. 57, part B, section 4; L. 2007, ch. 53, section 1

**Subject:** State aid for public library construction.

**Purpose:** To prescribe eligibility requirements and criteria for applications for State aid for library construction, and conform the commissioner's regulations to recent changes made to Education Law, section 273-a.

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-32-07-00011-P, Issue of August 8, 2007.

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

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

#### Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on August 8, 2007, the State Education Department received the following comment on the proposed amendment.

#### COMMENT:

Subdivision (f) of section 90.12 of the Regulations of the Commissioner of Education should be revised so that the payment schedule for State aid for public library construction and renovation projects is changed from a 50/40/10 percent basis to a 90/10 percent basis, as was statutorily required for State fiscal year 2006-2007. The 50/40/10 percent payment schedule for these projects will cause undue hardship on public libraries by providing the libraries with only 50 percent of project costs up front and, as a result, forcing libraries to pay remaining project costs from alternative

funding sources until their receipt of the remaining State aid. The new 50/40/10 percent payment schedule may force libraries to delay or eliminate necessary library construction or renovation projects.

DEPARTMENT RESPONSE:

The proposed amendment is consistent with Education Law section 273-a, as recently amended by the Legislature in Chapter 57 of the Laws of 2007, which requires the payment schedule for State aid for public library construction and renovation projects be changed to a 50/40/10 percent basis from a 90/10 percent basis. Recommendation to change the payment schedule back to a 90/10 percent basis is beyond the scope of the proposed amendment in that it requires a statutory change. To revise the payment schedule for such State aid, legislative changes to Education Law section 273-a would need to be made before the Commissioner's Regulations could be so revised.

NOTICE OF ADOPTION

Procedures for Public Hearings Concerning Charter Schools

**I.D. No.** EDU-32-07-00012-A

**Filing No.** 1190

**Filing date:** Oct. 29, 2007

**Effective date:** Nov. 15, 2007

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

**Action taken:** Addition of section 119.4 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1); and L. 2006, ch. 57, part D-2, section 7

**Subject:** Procedures for public hearings concerning charter schools pursuant to Education Law, section 2857(1).

**Purpose:** To establish procedures for the conduct of public hearings by school district to solicit comments from the community in connection with the issuance, revision or renewal of a charter school's charter pursuant to Education Law, section 2857(1)

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-32-07-00012-P, Issue of August 8, 2007.

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

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

**Assessment of Public Comment**

A Notice of Proposed Rule Making was published in the State Register on August 8, 2007. The State Education Department received the following comment:

COMMENT:

One commenter expressed concerns about the hearing requirements in proposed section 119.4 and suggested that language be added to the regulation to ensure that an application for the formation, revision or renewal of a charter school and/or its charter not be delayed or denied should a hearing not be held.

DEPARTMENT RESPONSE:

No revision to the proposed regulation is necessary. The hearing requirements in section 119.4 are consistent with Education Law § 2857. The hearings required by Education Law § 2857 ought to be held in time to inform a charter entity regarding its decision to approve or deny an application for the formation of a new charter school and/or the renewal or revision of an existing charter school or charter. The process and timelines established by this regulation help to ensure that charter entities will be so informed.

Department of Environmental Conservation

NOTICE OF ADOPTION

Hunting Season for Black Bear

**I.D. No.** ENV-36-07-00006-A

**Filing No.** 1197

**Filing date:** Oct. 30, 2007

**Effective date:** Nov. 14, 2007

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

**Action taken:** Amendment of section 1.31 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-0903, and 11-0907

**Subject:** Hunting season for black bear.

**Purpose:** To lengthen the black bear hunting season in the Catskill bear range.

**Text or summary was published** in the notice of proposed rule making, I.D. No. ENV-36-07-00006-P, Issue of September 5, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Jeremy Hurst, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8867, e-mail: jehurst@gw.dec.state.ny.us

**Additional matter required by statute:** A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

**Assessment of Public Comment**

The Department received comments on the proposed rule. A summary of these comments and the Department's response follow:

**Comment:** Many comments mentioned the enjoyment that comes with seeing bears but also indicated that the bear population was too numerous, and that concerns for public safety and property damage have increased. The comments stated that the proposed regulation change is a necessary means to reduce the bear population.

**Response:** The Department agrees. Bear hunting remains the only viable and cost effective tool for controlling bear numbers on a landscape scale. Opening the regular bear season in the Catskills on the same day as the regular deer season is expected to increase bear harvest, reduce bear population growth, and reduce bear range expansion. The Department anticipates that increased bear harvests in the Catskills will result in a reduction in negative bear-human interactions, and reduce levels of bear nuisance activity.

**Comment:** Many comments were received in support of the proposed expansion of black bear hunting season in the Catskills, noting that sightings of bears and bear sign have increased in recent years and that the bear population should be reduced.

**Response:** The Department uses population reconstruction models and several other indices to track bear populations, all of which show bear population growth in recent years. The Department agrees that the black bear population in the Catskills should be reduced.

**Comment:** There were many comments that supported the proposed changes because they will provide more hunting opportunity, thereby contributing to effective management of black bears and increased hunter satisfaction. Several hunters commented that they have only seen bears while hunting during the first few days of deer season, when the bear season was not yet open. These hunters expressed strong support for the proposal.

**Response:** The proposed rulemaking will afford hunters in the Catskill range additional black bear hunting opportunity. Approximately 35% of all Southern Zone buck deer harvest occurs during the first two days of the regular deer season, and many hunters may only hunt those two days of the season. By changing the bear season in the Catskill range to open concurrently with the regular deer season, the proposal will give many hunters the opportunity to take a bear.

**Comment:** Some people commented that reducing the black bear population may reduce predatory pressure on white-tailed deer and allow the deer population in the Catskills to grow.

Response: Black bears are known predators of deer, particularly deer fawns. The impact of bear predation on deer populations in the Catskills has not been documented. Reduction of bear populations in the Catskills may result in increased survival of fawn deer, but the Department does not expect significant changes in the deer population due to this proposed rule-making.

Comment: Comments were received from several beekeepers and an organization representing agricultural interests. The beekeepers reported increasing levels of damage from bears in recent years and strongly supported the proposed rule-making as a means to reduce damage to their hives. The agricultural organization considers the proposed rule-making to be beneficial to New York's farming sector and is hopeful similar bear season expansions could be extended to other areas of the state.

Response: Increased harvest of bears by hunters may reduce destruction of bears by apiarists and reduce the need for nuisance permits for agricultural damage. The proposed rule-making only addresses the regular bear hunting season in the Catskill range, though the Department may consider changes to bear hunting in other areas of New York as needed to meet management objectives.

Comment: Several comments indicated that the negative impacts associated with bears are primarily a human behavior problem, not a bear problem. Comments suggested that the Department should educate the public in black bear management and nuisance prevention/control practices; the Department should limit the public's ability to build homes in areas occupied by bears; an expansion of the hunting season will not, by itself, resolve problems created by just a few bears; and the Department should implement a long-term non-lethal management program (e.g., preventing bear access to attractants, using fencing and repellents, and aversive conditioning by Department staff).

Response: The Department has long-standing and ongoing programs to educate the public and prevent bear damage. The Department recognizes that effective bear management involves education, non-lethal intervention, and population management. Information concerning these three categories is accessible through the Department's website ([www.dec.ny.gov](http://www.dec.ny.gov)). The Department has recently initiated a series of public meetings across the state to educate the public about bear population status and distribution in New York. These meetings are also intended to inform the public about living in proximity to bears and actions they can take to reduce the potential for negative human-bear interactions.

Despite the Department's educational outreach, this strategy alone is not sufficient to mitigate damages caused by black bear, and additional measures above and beyond education are needed to reduce damage and conflicts with people.

While residential development has increased within bear range, the bear population has also begun to occupy new areas. Addressing how and where humans choose to build their homes is beyond the scope of this proposal, but this proposed rule-making is expected to reduce bear range expansion.

The Department firmly believes that hunting is an important component of a comprehensive management program, which includes efforts to mitigate the negative black bear impacts over large areas. The additional harvest anticipated in the Catskill range, in combination with education and preventative measures, is expected to bring the number and magnitude of negative impacts in better balance with human interests.

Comment: Comments were received opposing the proposed rule-making because of concern of increased trespass and other illegal activity.

Response: The Department believes that the majority of black bears harvested in the proposed areas will be taken opportunistically by deer hunters. The Department does not believe the proposed rule-making will alter hunter behavior to increase levels of trespass or illegal activity in the Catskill bear hunting area.

Comment: Comments were received opposing the proposed rule-making because of opposition to any bear hunting, stating that hunting is a cruel and inhumane method of bear population control.

Response: The Department firmly believes that bear hunting is the only viable management action for controlling bear numbers on a landscape scale and is an essential component of a comprehensive management program that also includes public education and non-lethal measures of reducing negative bear impacts. Bear hunting is a lawful and effective method of controlling bear populations through regulated harvest.

Comment: One comment suggested that the Department's estimates of the bear population in the Catskill bear range is incorrect and inflated due to multiple complaints being generated by an individual bear.

Response: The Department monitors several indices of the bear population (annual bear harvest, nuisance complaints, non-hunting mortality, citizen observations) to determine population trends. The Department also uses biological data to reconstruct the bear population. The Department's bear population indices and model support the estimated size of the bear population in the Catskills and its ability to sustain more hunting pressure.

Comment: Several bear hunters commented that the proposed rule-making will allow a larger number of bears to be taken incidentally by deer hunters. They expressed concern that this may lead to increased wanton waste of bears and over-harvest.

Response: The Department recognizes that a majority of the bear harvest occurs when deer hunters encounter and take a bear. These hunters are typically very responsible with their harvest, and the Department does not believe the proposed rule-making will result in waste of harvested bears. The Department will continue to monitor trends in the bear population to ensure that over-harvest does not occur.

Comment: Several comments were received suggesting that the proposed lengthening of the bear hunting season in the Catskill bear range will not result in an increased harvest of nuisance bears.

Response: The Department's intent with the proposed rule-making is to increase harvest of black bears in the Catskill bear range. A reduction in bear population is expected to reduce negative bear-human interactions. Furthermore, the proposed rule-making will result in bears being taken by deer hunters. Deer hunters often frequent fringe habitat (transition areas between forest and agriculture or forest and residential) and bears taken in these areas are likely to also be bears that have caused negative impacts.

Comment: One comment suggested that bear management programs should be thoroughly researched and developed to help maintain a healthy balance between people and nature before hunting occurs.

Response: The current proposal was developed by professional wildlife staff after due consideration of the available biological data and public attitudes. Further, the proposal is consistent with the Department's mandate for wildlife management and objectives of the Department's bear management program. This includes balancing the needs of people with the desire to sustain a viable black bear population at the landscape level. The Department's proposal will help to accomplish this balance.

Comment: One comment stated that the Department's proposal is an overreaction to a relatively minor problem. The comment suggested that killing bears is the worst way to resolve conflicts between bears and humans and that the best solution is to remove the temptations that bring bears into proximity with humans.

Response: The bear population in the Catskill range has expanded in number and distribution in recent years. Concurrent with that population growth, the number and nature of negative bear-human interactions also increased. The Department disagrees that negative human-bear conflicts are a minor problem.

Removing attractants that entice bears into proximity with humans is a critical component in reducing human-bear conflicts but alone is insufficient to control population growth and expansion. The increased harvest of bears should slow population growth and expansion. In turn, a reduced bear density is expected to lower the number of bears in proximity to humans and reduce negative human-bear conflicts. While bears are generally wary of people and often seek to avoid encounters with humans, bears can become habituated to people and may develop bold or aggressive behavior, especially when they are conditioned to find food near homes (e.g., garbage, bird feeders, and barbeque grills). The Department will continue to respond to nuisance bear activity on a case-by-case basis and to educate the public in methods to reduce their potential for negative bear interactions. However, the Department also believes that expansion of hunting opportunity in the Catskill bear range, as proposed, is necessary to reduce the bear population.

The proposed rule-making is intended to stabilize or decrease the number of bears, and thereby reduce negative interactions between bear and people, while concurrently providing additional hunting opportunity for bears. The Department believes that this proposal will achieve these goals, and therefore the Department is adopting the proposed rule-making as originally published.

## Department of Health

### EMERGENCY RULE MAKING

#### Non-Prescription Emergency Contraceptive Drugs

**I.D. No.** HLT-46-07-00004-E

**Filing No.** 1196

**Filing date:** Oct. 30, 2007

**Effective date:** Oct. 30, 2007

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

**Action taken:** Amendment of section 505.3(b)(1) of Title 18 NYCRR.

**Statutory authority:** Public Health Law, sections 201(1)(v) and 206(1)(f); and Social Services Law, section 363-a(2)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** We are proposing that this regulatory amendment be adopted on an emergency basis because emergency contraceptive drugs have been approved by the Federal Food and Drug Administration as a non-prescription drug for women 18 years of age and older. Medicaid law requires a written order for non-prescription drugs. A written order requires that a qualified medical practitioner provide the pharmacy with a written, telephone or fax order for a specific drug for a specific patient. This requirement can delay the use of non-prescription emergency contraceptive drugs. Such drugs are effective if taken within 72 hours of unprotected intercourse but are most effective if taken sooner, ideally within 12 hours. The requirement for a written order impedes earliest access to the drug and reduces the effectiveness of the drug.

The FDA approval of emergency contraceptive drugs as non-prescription drugs is limited to women 18 years of age and older. New York State Medicaid will limit dispensing of this drug to 6 courses of treatment in any 12 month period without a prescription or written order for women 18 years of age and older.

**Subject:** Non-prescription emergency contraceptive drugs.

**Purpose:** To allow access to Federal drug administration approved non-prescription contraceptive drugs to be dispensed by a pharmacy without a fiscal order to women 18 years of age and older.

**Text of emergency rule:** Paragraph (1) of subdivision (b) of section 505.3 is amended to read as follows:

(b) Written order required. (1) Drugs may be obtained only upon the written order of a practitioner, except for *non-prescription emergency contraceptive drugs as described in subparagraph (i) of this paragraph, and for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910.*

(i) *Non-prescription emergency contraceptive drugs for recipients 18 years of age or older may be obtained without a written order subject to a utilization frequency limit of 6 courses of treatment in any 12 month period.*

[(i)] (ii) The ordering/prescribing of drugs is limited to the practitioner's scope of practice.

[(ii)] (iii) The ordering/prescribing of drugs is limited to practitioners not excluded from participating in the medical assistance program.

**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 January 27, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Department of Health, Regulatory Affairs Unit, Rm. 2438, ESP Tower Bldg., Albany, NY 12237, (518) 473-7488

#### Regulatory Impact Statement

Statutory Authority:

The authority for the proposed rule is contained in Sections 363, 363-a and 365-a of the Social Services Law (SSL). Section 363 of the SSL states that the goal of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department of Health (Department) as the single state agency for the administration of the Medicaid program and provides that the Department shall make such regulations, not inconsistent with law, as may be necessary to implement

the provisions of the program. Section 365-a(2)(g) of the SSL defines "medical assistance" as including prescription and non-prescription drugs.

Legislative Objective:

The proposed rule meets the legislative objective of providing timely access to medically necessary care for indigent Medicaid recipients 18 years of age and older who require emergency contraception. The proposed rule will exempt Federal Food and Drug Administration (FDA) approved over-the-counter drugs for emergency contraception from the Department's regulations which require that a pharmacy have a written order from a practitioner prior to dispensing drugs to Medicaid recipients.

Needs and Benefits:

Emergency contraceptive drugs have been available for some time by prescription only. In August of 2006, the FDA approved emergency contraceptive drugs as non-prescription drugs ("over-the-counter") when used by women 18 years of age and older. According to current State Medicaid regulations, 18 NYCRR Section 505.3(b)(1), pharmacies must have a written order (also known as a fiscal order) from a practitioner prior to dispensing an over-the-counter drug to a Medicaid recipient. The regulations do provide an exception, however, for telephone orders from a practitioner which comply with the provisions of the Education Law with respect to such orders. The requirement for a written order necessitates that the recipient visit or call a licensed practitioner prior to going to the pharmacy and then either bring the written order to the pharmacy, have the pharmacist and the practitioner talk on the phone, or have the practitioner send the order by fax. The Department wants to avoid any time barriers to accessing emergency contraceptive drugs since the drugs are most effective in preventing pregnancy if taken within 72 hours after an act of unprotected sex. The Department is eliminating the written order requirement specifically for FDA approved over-the-counter emergency contraceptive drugs dispensed for use by women 18 years of age and older. Women under 18 years of age must still obtain and present a prescription which meets the requirements of section 6810 of the Education Law in order to obtain these drugs.

Costs:

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

There would be no increased costs to the pharmacies for implementation of and continuing compliance with this rule.

Costs to State Government:

Because the Department is eliminating the requirement that there be a written order of a practitioner prior to dispensing this over-the counter drug, payment for emergency contraceptive drugs under New York's Medicaid program will no longer comply with the federal requirement for such an order. The Department, therefore, proposes using 100% State funds for payment for these drugs. The agency will absorb costs associated with system changes to remove these claims from the federal payment program. These costs are considered minimal. It is estimated that the additional annual cost of payment for emergency contraceptive drugs to the State will be \$1.5 million. These costs to the State will be offset, however, by estimated cost avoidance from reduced births and deliveries attributed to increased access to emergency contraceptive drugs.

The Department examined two years of Medicaid claim data for emergency contraceptive drugs (date of payment from December 1, 2004 to November 30, 2006). The data was extracted from the eMedNY Data warehouse. The Department made the assumption that costs for these drugs would roughly double after this regulation became effective with 100% of rebate adjusted costs being assumed by the State.

Gross annual savings estimates of approximately \$3.2 million were calculated using birth and delivery costs determined in a recent New York State Department of Health, Office of Medicaid Management study. This study analyzed New York State Department of Health vital statistics and New York State Department of Health Medicaid claim data pertaining to prenatal care, delivery and other associated health care costs. Assuming that eliminating the fiscal order mandate would double prescriptions for contraceptive drugs, the Department used claim data for the one year period December 1, 2005 to November 30, 2006 and assumed that approximately 2 in 100 of these claims would have resulted in a birth and delivery cost. The Department used a two year period to determine the expected ongoing increase in the cost of these drugs. The Department only used the one year period (December 1, 2005 to November 30, 2006) to calculate savings, which had the effect of creating a more conservative savings estimate. The gross annual savings in the cost of prenatal care, delivery and other health care costs associated with delivery using this methodology would be \$3.2 million, with approximately \$1.5 million each representing the federal and state share of savings. There is no local share in savings

because of the local share cap which is set at calendar year 2005 (trended) levels.

**Costs to Local Government:**

There will be no cost to local government.

**Local Government Mandates:**

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

**Paperwork:**

This regulatory amendment will decrease paperwork for medical providers and pharmacies since a fiscal order is not needed for this drug for women 18 years of age or older.

**Duplication:**

This regulatory amendment does not duplicate, overlap or conflict with any other State or federal law or regulations.

**Alternatives:**

Currently, a written order of a practitioner is required by federal regulations (42 CFR 440.120(a)(3)) and State Medicaid regulations for the dispensing of emergency contraceptive drugs. The Department considered another proposal to eliminate the need for each recipient to obtain an individual written order from a practitioner for emergency contraceptive drugs. That alternative was to replace the requirement for a fiscal order with a "non-patient specific order" as provided for in section 6909(5) of the Education Law. The non-patient specific order would be written by a qualified medical practitioner in agreement with a specific pharmacy to dispense emergency contraception as an over-the-counter drug to any eligible woman 18 years of age and older who requests it. The order is not patient specific so it would eliminate the delay in treatment inherent in requiring the recipient to obtain a written order. The Department determined this alternative would not likely be available without a statutory amendment because the Education Law and regulations limit its use to situations involving immunizations, emergency treatment of anaphylaxis, purified protein derivative tests and HIV testing.

**Federal Standards:**

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

**Compliance Schedule:**

The proposed regulatory amendment will become effective upon filing with the Department of State.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

**Job Impact Statement**

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

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## Division of Housing and Community Renewal

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Qualified Allocation Plan for the Allocation of Low-Income Housing Credits**

**I.D. No.** HCR-46-07-00002-P

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

**Proposed action:** Amendment of sections 2040.1-2040.14 of Title 9 NYCRR.

**Statutory authority:** Executive Order Number 135, dated February 27, 1990 as continued by Executive Order Number 5, dated January 1, 2007; U.S. Internal Revenue Code section 42(m); N.Y. Public Housing Law section 19

**Subject:** State of New York's qualified allocation plan for the allocation of low-income housing credits and regulations for the allocation of New York State low-income housing credits.

**Purpose:** To amend the process by which DHCR reviews Federal low-income housing credit applications and State low-income housing tax credit applications, and utilizes selection criteria, and to increase consistency with Federal statutes.

**Public hearing(s) will be held at:** 1:30 p.m., Jan. 3, 2008 at Division of Housing and Community Renewal, 38-40 State St., Hampton Plaza Ballroom, Albany, NY; at Division of Housing and Community Renewal, 25 Beaver St., Rm. 510, New York, NY; Division of Housing and Community Renewal, 620 Erie Blvd. W, Suite 312, Syracuse Conference Rm., Syracuse, NY; and Division of Housing and Community Renewal, Statler Towers, 107 Delaware Ave., Suite 600, Buffalo Conference Rm., Buffalo, NY.

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

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

**Substance of proposed rule (Full text is posted at the following State website: [www.dhcr.state.ny.us](http://www.dhcr.state.ny.us)):** 9 NYCRR Part 2040 is amended as follows:

1. Alphabetize defined terms.
2. Amend the definition of "adjusted project cost" to clarify it, and delete an unnecessary reference to "approved total project cost".
3. Delete the definitions of the unused terms "approvable costs of a community service facility", "approved total project cost", "gross syndication proceeds", "operating subsidy reserve" and "public offerings".
4. Amend the definition of "code" to provide a current citation to Section 42 of the Internal Revenue Code ("IRC").
5. Add a new defined term "compliance period" to provide a plain language definition of this term, eliminating the need to reference the IRC.
6. Define "extended use period" to provide a plain language definition, eliminating the need to reference the IRC.
7. Add a new defined term "high acquisition cost project" which applies to projects which have acquisition costs above 25% of total development cost and clarifies DHCR's discretion to limit the amount of the developer's fee so that a high acquisition cost does not automatically elevate the developer's fee unreasonably.
8. Add a new defined term "HTFC", an acronym for the Housing Trust Fund Corporation.
9. Add a new defined term "local non-profit organization" to clarify the non-profit participation that will qualify for scoring points.
10. Amend the definition of "operating deficit guarantee" and amend section 2040.3(g)(2)(ii) to clarify DHCR's operating deficit guarantee requirements.
11. Add a new defined term "persons with special needs" to specify those persons for which LIHC-assisted units may be specially targeted.
12. Amend the definition of "preservation project" to eliminate the requirement that these projects be in a crisis situation or be part of a community revitalization plan; and to clarify the commencement of the 30 year period during which the proposed rehabilitation must be sufficient.
13. Add a new defined term "primary market area".
14. Add a new defined term "qualified low-income housing project" to provide a plain language definition of this IRC term.
15. Add a new defined term "supportive housing" to specify DHCR's requirements for a project to be considered supportive housing and therefore eligible for a possible set-aside of Credit.
16. Add a new defined term "visitability" with a corresponding new threshold requirement which incorporates a minimum accessibility standard into the Proposed Rule to assist households with elderly and disabled persons.
17. Revise language at section 2040.3(d)(1) regarding DHCR's process for providing a project with an initial award of Credit to clarify existing policy.
18. Revise language at section 2040.3(d)(2) to clarify DHCR's current process for issuance of a carryover allocation.
19. Replace references to Internal Revenue Service (IRS) Form 8609 with the term "final credit allocation."
20. Eliminate the threshold requirement at section 2040.3(e)(3) that all local governmental approvals required for the project have been obtained. An applicant will have to have initiated the process of securing all neces-

sary governmental approvals and demonstrate that the project is eligible to obtain such approvals.

21. Revise the experience requirement at section 2040.3(e)(6) to clarify that all parties involved in the project must have the requisite experience to develop and operate the proposed project.

22. Require that, at the time of application, the project developers, owners, and managers are not in default of their obligations to any governmental agency pertaining to similar projects.

23. Delete the threshold requirement that there be no change in the project's ownership structure as proposed prior to the issuance of the final credit allocation, eliminating potential ambiguity in the existing rule because section 2040.6(b) permits such changes with the approval of DHCR.

24. Delete the threshold requirement formerly at section 2040.3(e)(10) that the amount of annual credit requested does not exceed \$20,000 per unit.

25. Revise the threshold requirement at section 2040.3(e)(9) (formerly at section 2040.3(e)(11)) to clarify that the per project and per unit caps will be specified in DHCR's annual Notice of Credit Availability ("NOCA").

26. Revise the threshold requirement at section 2040.3(e)(10) to clarify that the "comprehensive market study of the housing needs of low-income individuals in the area" required by the IRC, must be conducted by professionals pre-approved by DHCR.

27. Clarify that it is the number of bedrooms in a unit (not merely the size of the units) that must be appropriate for the type of occupancy proposed.

28. Add a new threshold requirement at section 2040.3(e)(14) regarding accessibility standards for persons with mobility impairments.

29. Make changes to correspond to the changes made to the term "preservation project", and replacement of that term with "high acquisition cost project".

30. Add a new threshold requirement at section 2040.3(e)(17) which eliminates the owner's right, after 15 years of low-income operation, to request a "qualified contract", requiring DHCR to find a non-profit buyer willing to continue to operate the project under the requirements of the Program. This gives project owners the option to commit to a regulatory period of a minimum of 30 years or to commit to sell the project to the tenants.

31. Add a new threshold requirement which requires all projects to incorporate certain "green building" standards including: utilizing Energy Star (or equivalent) appliances, light fixtures and heating systems; water usage and energy efficiency measures; passive radon-reduction if necessary; and, lead-safe work practices.

32. Reorganize section 2040.3(f), "project scoring and ranking criteria" so that the criteria "are listed in descending order according to the relative weight given" as stated in the section.

33. Delete the "housing needs" scoring criteria at section 2040.3(f)(1) and replace it with a new scoring criteria "community impact/revitalization", which better measures the need in a locality for the type of housing proposed.

34. Delete the "efficiency of credit use" scoring criteria at section 2040.3(f)(2) and replace it with "financial leveraging". The proposed scoring provision eliminates DHCR's awarding of Credit based on the "amount of credit requested for the project." The financial leveraging criteria will award points to the extent other financing sources are utilized to minimize the use of DHCR/HTFC resources, and based upon the amount of credit requested per unit adjusted for unit size.

35. Delete the scoring provision "regulatory period" and replace it with a new criteria "long term affordability." The former provision provided scoring points for projects providing a regulatory period of a minimum of 30 years, which DHCR has made a threshold requirement. This new provision will encourage long-term project affordability by providing points to projects which commit to a minimum regulatory period of longer than 30 years.

36. Add a new scoring criteria "green building". This new scoring criteria will provide an incentive for projects financed with Credit to reduce energy and resource consumption, minimize environmental impacts, and utilize Credit to remediate sites in need of environmental remediation.

37. Amend the "energy efficiency" scoring criteria to provide points for receiving financing through the New York State Energy Research and Development Authority's ("NYSERDA") Multifamily Building Performance Program or the New York State Energy Star Labeled Homes Program, or demonstrating that the project will meet comparable energy efficiency standards.

38. Add a new scoring criteria "fully accessible and adapted, move-in ready units" to provide additional points for projects designed to serve the growing population of persons with mobility, vision and hearing impairments.

39. Delete the "tenant buy-out plan" scoring criteria.

40. Amend the "project amenities" scoring criteria to: modify some criteria, and increase point value and the number of amenities for which points will be given including: Energy Star (or equivalent) air conditioning; laundry facilities or washer/dryer hookups, and dishwashers; discounted broadband internet access; community room; on-site management office; outdoor patio and garden space; and computer lab.

41. Amend the "project readiness" scoring criteria so that it better gauges project readiness.

42. Revise the "participation of local tax exempt organizations" scoring criteria formerly at 2040.3(f)(8) and replace it with a renamed scoring criteria "participation of local non-profit organizations" to conform the criteria more closely to the wording and requirements of the IRC, reduce the number of points from 5 to 4, and clarify the levels of participation for which points will be awarded.

43. Amend the "special needs" scoring criteria to replace the term "special populations" with the term "persons with special needs", and to add the requirement that projects receiving scoring points submit a "comprehensive service plan" to ensure that persons with special needs are provided with needed services.

44. Add a new scoring criteria "mixed income" to provide 3 points for projects which reserve at least 15 percent of total project units for households earning more than 60 percent of area median.

45. Add a new section "set-asides" which compliments and clarifies DHCR's right to allocate credit to projects which further the State's housing goals.

46. Amend section 2040.3(g)(2)(ii) to recognize that changes in the low-income housing industry have led to the ownership of projects by limited liability companies. The section is also amended to eliminate the statement that the amount of the developer's fee and the method for funding the operating deficit guarantee shall be established at the credit reservation or binding agreement stage.

47. Amend section 2040.3(g)(2)(iii) to eliminate an apparent inconsistency and to clarify that the developer's fee is an allowable cost that may be reduced where an identity of interest has been found, effecting no substantive change.

48. Sunset the regulations regarding projects which are financed by tax-exempt bonds subject to the Private Activity Bond Cap in anticipation of delegating processing to the New York State Housing Finance Agency.

49. Update the rule's Freedom of Information Law reference.

50. Amend section 2040.9(c) to correct a typographical error to confirm the Existing Rule to the IRC's requirement, and DHCR's practice, of conducting inspections in a manner which will not give project owners notice of what units, or what year's records, will be inspected.

51. Amend the scoring section of 9 NYCRR section 2040.14(d) and add a general allocation policy section and a set-aside section in order to coordinate, to the extent possible, the scoring mechanisms, general allocation policies and the set-aside policies for both the LIHC and SLIHC programs.

52. Additionally, DHCR made a number of minor typographical corrections and formatting changes to sections of the Existing Rule for consistency and grammatical reasons.

**Text of proposed rule and any required statements and analyses may be obtained from:** Arnon Adler, Division of Housing and Community Renewal, 38-40 State St., Albany, NY 12207, (518) 486-3305

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

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

#### **Summary of Regulatory Impact Statement**

##### **1. Statutory Authority:**

Executive Order Number 135, dated February 27, 1990, which was continued in full force and effect by Executive Order Number 5, dated January 1, 2007, authorizes the Commissioner of the Division of Housing and Community Renewal ("DHCR") to administer New York State's annual allotment of federal low-income housing tax credits. U.S. Internal Revenue Code ("IRC") Section 42(m) provides that Low-Income Housing Credit ("LIHC" or "Credit") must be allocated pursuant to a "qualified allocation plan" ("QAP") approved by the Governor. The LIHC program promotes housing for households earning up to 60 percent of the area median income.

Public Housing Law Article 2-A (the “Act”) created the New York State Low-Income Housing Tax Credit Program (“SLIHC”). The Act authorizes DHCR to allocate New York State tax credits to those who invest in the development of eligible housing for households earning up to 90 percent of area median income, and to promulgate rules and regulations necessary to administer the program.

2. Legislative Objectives:

The LIHC and SLIHC programs were enacted to promote housing that is affordable to persons meeting the applicable income eligibility criteria.

3. Needs and Benefits:

The changes to the existing rule (“Existing Rule”) which would be made by this proposed rule (“Proposed Rule”) will amend 9 NYCRR, Part 2040 to:

1. Clarify the definitions and DHCR policies and procedures.
2. Delete unused terms.
3. Update references to IRC Section 42 and the Freedom of Information Law.
4. Provide plain language definitions of IRC terms.
5. Add a new term “high acquisition cost project”.
6. Define “local non-profit organization” and specify non-profit participation that qualifies for scoring points.
7. Amend the rule to account for project ownership by limited liability companies.
8. Define “persons with special needs” to specify those persons for which LIHC-assisted units may be specially targeted.
9. Amend the definition of “preservation project” to eliminate the requirement that these projects be in a crisis situation or be part of a community revitalization plan; and clarify the 30 year rehabilitation sufficiency requirement.
10. Define “primary market area”.
11. Define “supportive housing” to specify DHCR’s requirements for a possible set-aside of Credit.
12. Eliminate the threshold requirement that all local governmental approvals required for the project have been obtained in response to concerns that this disadvantaged worthwhile projects.
13. Require that project participants are not in default of governmental agency obligations pertaining to similar projects.
14. Delete the requirement that there be no change in the project’s ownership structure prior to the final allocation of credit.
15. Delete the threshold cap of \$20,000 per unit because it is too restrictive. This cap will now be specified in DHCR’s annual Notice of Credit Availability (“NOCA”).
16. Specify that the IRC required “comprehensive market study” be conducted by professionals pre-approved by DHCR.
17. Require design features accommodating persons with mobility impairments.
18. Make changes to the term “preservation project”, which correspond to the new term “high acquisition cost project”.
19. Require a minimum 30 year regulatory period in recognition of the State’s need to preserve affordable housing.
20. Require certain energy efficiency and environmental “green building” standards and provide scoring points for additional “green building” measures.
21. Replace the “housing needs” scoring criteria with “community impact/revitalization”, which better measures a locality’s need for the housing proposed.
22. Replace the “efficiency of credit use” scoring criteria with “financial leveraging”, awarding points to the extent DHCR financing is minimized.
23. Amend the “energy efficiency” scoring criteria to provide points for participation in certain programs involving financing from the New York State Energy Research and Development Authority or demonstrating that the project will meet comparable energy efficiency standards.
24. Add a new scoring criteria “fully accessible and adapted, move-in ready units” to encourage projects designed to serve persons with mobility, vision and hearing impairments.
25. Delete the “tenant buy-out plan” scoring criteria which was criticized as impractical for many projects.
26. Amend the “project readiness” scoring criteria so that it better gauges project readiness.
27. Amend the “persons with special needs” scoring criteria to ensure that persons with special needs are provided with appropriate services.
28. Replace the “participation of local tax exempt organizations” scoring criteria with “participation of local non-profit organizations” to con-

form the criteria more closely to the IRC’s wording and requirements and to reduce the point value.

29. Add a “mixed income” scoring criteria to encourage projects which reserve units for households earning over 60 percent of area median income to minimize concentrations of poverty.

30. Amend the “project amenities” scoring criteria to encourage projects which provide additional quality of life amenities.

31. Add a new section “set-asides” which clarifies DHCR’s right to allocate credit to projects which further the State’s housing goals.

32. Amend section 2040.3(g)(2)(ii) to recognize ownership of projects by limited liability companies and to eliminate the statement that the amount of the developer’s fee shall be established at the credit reservation or binding agreement stage.

33. Sunset the regulations regarding projects which are financed by tax-exempt bonds subject to the Private Activity Bond Cap in anticipation of delegating processing to the New York State Housing Finance Agency.

34. Amend the SLIHC program’s “project scoring and rating criteria”, and add a general allocation policy section and a “set-aside” section, in order to coordinate, to the extent possible, the scoring mechanisms, general allocation policies and the set-aside policies, for both the LIHC and SLIHC programs.

35. Additionally, DHCR made a number of minor typographical corrections and formatting changes to sections of the Existing Rule for consistency and grammatical reasons.

4. Costs:

(a) Costs to State Government.

There will be no costs to state government because of the proposed amendments to the rule. DHCR will administer the LIHC and SLIHC programs with existing staff and resources.

(b) Costs to local government.

None.

(c) Cost to private regulated parties.

The changes made by the Proposed Rule should result in no increased costs to regulated parties. Any increase in development costs should be offset by the Credit allocated to the project.

5. Local Government Mandates:

None.

6. Paperwork:

The rule requires the filing of application and supporting documentation to establish eligibility for an allocation of the federal tax credits.

None.

7. Duplication:

None.

8. Alternatives:

The alternative to the Proposed Rule is the Existing Rule which does not adequately address the Division’s need to clarify its definitions, and strengthen and broaden its scoring criteria to meet more programmatic goals. Specifically:

1. The alternative to deleting definitions of unused terms, and alphabetizing defined terms, is to fail to make the rule more readable.

2. The alternative to revising the definition of “code” is the existing outdated reference.

3. The alternative to defining “high acquisition cost project” and the corresponding threshold criteria is to allow developer’s fees to be based on the cost of purchasing existing housing.

4. The alternative to defining “local non-profit organization” and “primary market area” is to fail to respond to the need for more specificity.

5. The alternative to defining “persons with special needs” is to leave the term undefined.

6. The alternative to amending the definition of “preservation project” is the current definition, which hampers efforts to preserving existing housing.

7. The alternative to defining “supportive housing” and reserving the right to set-aside Credit for such housing is to fail to clarify the basis of the State’s discretion to provide additional housing opportunities for persons with special needs.

8. The alternative to providing a definition of “visitability” and adding the corresponding threshold criteria (section 2040.3 (e)(14) of the Proposed Rule) is to fail to ensure that Credit-assisted housing is accessible to elderly persons and persons with mobility impairments.

9. The alternative to revising section 2040.3(d)(1), regarding the issuance of a binding agreement in order to facilitate attainment of financing, is to fail to set forth the general purpose of a binding agreement.

10. The alternative to amending the provision allowing a carryover allocation, despite the failure of the owner to expend 10 percent of the

owner's reasonably expected basis, is the current text which indicates that DHCR will continue to make judgment calls regarding carryover allocations, and risk the loss of Credit.

11. The alternative to deleting the reference in section 2040.3(d)(2), setting forth developer fee limits in the carryover allocation, is to retain this provision; IRC requirements make the eliminated timeframe unnecessary.

12. The alternative to eliminating the requirement that all local governmental approvals have been obtained is the current requirement which makes it difficult to develop worthwhile projects.

13. The alternative to revising the experience requirement is to retain the current text which can be misinterpreted.

14. The alternative to amending section 2040.3(e)(8) is the current text which allows parties to participate in the Credit program despite having failed to properly develop or run similar projects.

15. The alternative to eliminating the requirement forbidding changes in the project's ownership is the current text, which creates ambiguity because section 2040.6(b) allows such changes with DHCR approval.

16. The alternatives to eliminating the per unit cap of credit allocations to \$20,000 are not practical, therefore DHCR has determined that the cap should be set forth in the annual NOCA.

17. The alternative to amending the marketing study requirement is to fail to provide needed specificity.

18. The alternative to extending the minimum regulatory period is to fail to provide for the preservation of affordable housing.

19. The alternative to adding "green building" threshold requirements is to fail to promote conservation.

20. The alternatives to the "community impact/revitalization" criteria which replaces "housing needs" include the failure to amend the criteria to better measure the need for the type of housing proposed.

21. The alternative to revising the "efficiency of credit use" scoring criteria, now "financial leveraging", is the current text which hampers the development of worthwhile projects.

22. The alternative to amending the "energy efficiency" scoring criteria is to delete the current text because its components have been made threshold requirements.

23. The alternative to including the "fully accessible and adapted, move-in ready units" scoring criteria is to fail to promote affordable housing designed to serve persons with physical impairments.

24. The alternative to amending the "project amenities" scoring criteria is to fail to encourage projects providing desirable amenities.

25. The alternative to amending the "project readiness" scoring criteria is to fail to better gauge project's readiness to proceed.

26. The alternative to amending the former "participation of local tax exempt organizations" scoring criteria is the current section which has been criticized as over-emphasized. The amendment also ensures compliance with IRC requirements.

27. The alternative to the amendments to the "special needs" scoring criteria is the current text, which does not sufficiently address special needs.

28. The alternative to adding the "mixed income" scoring criteria is to fail to provide an incentive for minimizing concentrations of poverty.

29. The alternative to adding the "set-asides" section is to fail to provide for the special priorities for which DHCR may show a preference or reserve Credit.

30. The alternative to amending section 2040.3(g)(2)(iii) is the current text, which might create ambiguity.

31. The alternative to adding 2040.4(f) is to have DHCR, instead of the New York State Housing Finance Agency, process applications for projects which are financed by tax-exempt bonds subject to the Private Activity Bond Cap, with which the Housing Finance Agency has greater experience.

32. The alternative to amending the SLIHC program's scoring criteria, and adding a general allocation policy section and a set-aside section is to retain the current text which would be inconsistent with the proposed changes to LIHC regulations.

#### 9. Federal Standards:

This Rule does not exceed the minimum standards of the federal government for the LIHC or SLIHC programs.

#### 10. Compliance Schedule:

Not applicable. The rule changes will affect only those who apply to DHCR for allocations of Credit after the amendments to the rule are effective.

#### **Regulatory Flexibility Analysis**

The Division of Housing and Community Renewal has found that the proposed amendments to the rule at 9 NYCRR Part 2040 (the "Proposed

Rule") will have no negative impact on small businesses. DHCR sought and utilized the advice of persons who represent small businesses in order to ensure that the Proposed Rule would have no negative impact on small businesses. Prior to drafting the Proposed Rule, DHCR held three roundtable discussions (the "Roundtables"). Two Roundtables were held with members of the affordable housing industry who have been active in the Credit program, including members of the Rural Housing Coalition. One Roundtable was held with members of federal, state and local government who have been active in the Credit program. Sixty-seven members of the affordable housing industry who have been active in the Credit program were invited to attend the non-governmental Roundtables. Twenty members of federal, state and local government were invited to attend the governmental Roundtable. The invitees included for-profit and not-for-profit housing developers, attorneys, Credit syndicators and representatives of government agencies with an interest in the Credit program. Forty-eight members of the affordable housing industry attended the Roundtables, thirty of whom were representatives of small businesses. No participant expressed an opinion indicating that any of the amendments in the Proposed Rule would adversely affect small businesses. Based upon the Roundtables, its prior experience in the allocation of Credit to projects which utilize small business services, and the nature of the amendments, DHCR does not anticipate that the amendments in the Proposed Rule will have any adverse impact on small businesses.

#### **Rural Area Flexibility Analysis**

The Division of Housing and Community Renewal has found that the proposed amendments to the Rule at 9 NYCRR Part 2040 will not impose any adverse economic impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The changes to the existing Rule which would be made by the proposed amendments impose no further requirements in rural areas, will not impose additional capital or compliance costs on person/entities which are located in rural areas, and will have no other adverse impacts on rural areas.

Prior to drafting the Proposed Rule, DHCR held three roundtable discussions (the "Roundtables"). Two Roundtables were held with members of the affordable housing industry who have been active in the Credit program, including members of the Rural Housing Coalition. One Roundtable was held with members of federal, state and local government who have been active in the Credit program. Sixty-seven members of the affordable housing industry who have been active in the Credit program were invited to attend the non-governmental Roundtables. Twenty members of federal, state and local government were invited to attend the governmental Roundtable. The invitees included for-profit and not-for-profit housing developers, attorneys, Credit syndicators and representatives of government agencies with an interest in the Credit program. No invitee expressed an opinion indicating that the proposed changes to the rule would adversely affect rural areas. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no such impact should be anticipated.

#### **Job Impact Statement**

The Division of Housing and Community Renewal has found that the proposed amendments to the Rule at 9 NYCRR Part 2040 will have no adverse impact on jobs and employment opportunities. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no adverse impact should be anticipated. The proposed Rule's inclusion of requirements and incentives regarding energy conservation and the minimization of adverse environmental impacts may result in an increase in jobs in related industries.

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## State Division of Human Rights

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### NOTICE OF ADOPTION

#### **Address and Gender Reference**

**I.D. No.** HRT-34-07-00015-A

**Filing No.** 1195

**Filing date:** Oct. 30, 2007

**Effective date:** Nov. 14, 2007

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

**Action taken:** Amendment of section 466.7(g) of Title 9 NYCRR.  
**Statutory authority:** Executive Law, sections 290.3, 293.2, 295.5 and 297  
**Subject:** Address and gender reference.  
**Purpose:** To update and address and make the section gender neutral.  
**Text or summary was published** in the notice of proposed rule making, I.D. No. HRT-34-07-00015-P, Issue of August 22, 2007.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Caroline J. Downey, Division of Human Rights, One Fordham Plaza, Bronx, NY 10458, (718) 741-8402, e-mail: cdowney@dhr.state.ny.us  
**Assessment of Public Comment**  
 The agency received no public comment.

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## Division of the Lottery

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### NOTICE OF ADOPTION

#### Video Lottery Gaming Advertising

**I.D. No.** LTR-36-07-00003-A  
**Filing No.** 1180  
**Filing date:** Oct. 29, 2007  
**Effective date:** Nov. 14, 2007

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

**Action taken:** Amendment of section 2836-18.6(b)(2)(ii) of Title 21 NYCRR.

**Statutory authority:** Tax Law, section 1617-a

**Subject:** Video lottery gaming advertising.

**Purpose:** To allow for the use of the term “racino” in advertising.

**Text or summary was published** in the notice of proposed rule making, I.D. No. LTR-36-07-00003-P, Issue of September 5, 2007.

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

**Text of rule and any required statements and analyses may be**

**obtained from:** Julie B. Silverstein Barker, Acting General Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12231-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Office of Mental Health

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

#### Comprehensive Outpatient Programs

**I.D. No.** OMH-46-07-00001-P

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

**Proposed action:** Amendment of Parts 588 and 592 of Title 14 NYCRR.  
**Statutory authority:** Mental Hygiene Law, sections 7.90(b) and 31.04(a); Social Services Law, sections 364(a) and 364-a

**Subject:** Comprehensive outpatient programs.

**Purpose:** To equalize comprehensive outpatient program (COPS) and non-COPS funding.

**Text of proposed rule:** 1. Subdivision (g) of Section 588.13 of Title 14 NYCRR is amended to read as follows:

(g) Clinic, continuing day treatment, and/or day treatment programs for which an operating certificate has been issued and which are not design-

nated as *Level I* comprehensive outpatient programs pursuant to Part 592 of this Title may qualify to become *Level II* comprehensive outpatient programs under such Part, and shall comply with the applicable provisions of such Part. [, may be eligible to receive supplemental medical assistance reimbursement for services rendered. In order to receive supplemental medical assistance reimbursement, a program shall:

(1) agree to provide initial assessment services to all patients referred from inpatient or emergency settings within five business days of referral from such setting;

(2) directly provide or arrange for the provision of case management, home visiting services and other clinically necessary mental health services to maintain patients in programs and minimize patients’ absence from treatment;

(3) be determined to be in substantial compliance with all applicable regulations of the Commissioner of Mental Health;

(4) have received a current operating certificate that is of at least a total of six months duration; and

(5) be a current enrollee in good standing in the medical assistance program.]

2. Section 592.4 of Title 14 NYCRR is amended to read as follows:

§ 592.4 Definitions

(a) *Level I Comprehensive Outpatient Program* means a provider of services which has been licensed to operate an outpatient mental health program in accordance with Part 587 of Title 14 and has been annually designated by a local governmental unit to be eligible to receive supplemental medical assistance reimbursement for a specific program or specific programs under its auspice which agrees to provide the services required of a *Level I Comprehensive Outpatient Program* as set forth in this Part.

(b) *Level II Comprehensive Outpatient Program* means a provider of services, other than a *Level I Comprehensive Outpatient Program*, which has been licensed to operate a mental health clinic, day treatment or continuing day treatment program in accordance with Part 587 of this Title, which is not also licensed under Article 28 of the Public Health Law, and which agrees to provide the services required of a *Level II Comprehensive Outpatient Program* as set forth in this Part.

(c) Grant means the funds received by the provider pursuant to section 41.18, 41.23 or 41.47 of the mental hygiene law including State aid and any mandatory local contribution provided by a local government or a voluntary agency.

[c] (d) Provider, for the purpose of this Part, means the specific location of the licensed mental health outpatient program which received the mental health grant utilized in the initial calculation of the supplemental rate under the medical assistance program.

[d] (e) Eligible deficit means those funds received by the provider as a grant which are used as the basis for the supplemental Medicaid rate calculation in subdivision 592.8(c). The original grants may have been adjusted in accordance with this Part, where necessary.

[e] (f) Comprehensive outpatient program allocation means the maximum amount of comprehensive outpatient program reimbursement that a provider is allowed to retain in each local fiscal year.

3. The heading, and subdivision (a), of Section 592.5 of Title 14 NYCRR are amended to read as follows:

§ 592.5 Designation as a *Level I* comprehensive outpatient program.

(a) A *Level I* comprehensive outpatient program shall be designated by the local governmental unit in accordance with the criteria provided in section 592.7 of this Part. In order to receive supplemental medical assistance reimbursement, a program shall:

(1) be determined by the commissioner or his or her designee to be in substantial compliance with all applicable regulations of the Commissioner of Mental Health;

(2) have received a current operating certificate that is of at least a total of six months in duration; and

(3) be a current enrollee in good standing in the medical assistance program.

4. Subdivision (a) of Section 592.6 of Title 14 NYCRR is amended to read as follows:

(a) The local governmental unit shall designate and enter into written agreements with appropriate providers of services as *Level I* comprehensive outpatient programs. Such agreements shall, at a minimum reflect the requirements established in sections 592.6 and 592.7 of this Part;

5. The heading, subdivision (a), and paragraph (a)(2) of Section 592.7 of Title 14 NYCRR are amended to read as follows:

§ 592.7 *Level I* comprehensive outpatient program – criteria for designation and responsibilities

(a) In order to be designated as a *Level I* comprehensive outpatient program, a provider of services:

(2) shall have been designated as a *Level I* comprehensive outpatient program pursuant to subdivision 592.8(j) of this Part and shall:

6. Subdivisions (a), (c) (d), (h), (i), and (k) of Section 592.8 of Title 14 NYCRR are amended to read as follows:

(a) In addition to the medical assistance reimbursement rates available pursuant to [Parts 579 and] *Part* 588 of this Title, providers with at least one *Level I* comprehensive outpatient program are eligible to receive supplemental medical assistance reimbursement in accordance with the rules of this Part.

(c) The supplemental rate, for providers with at least one *Level I* comprehensive outpatient program, shall be calculated as follows:

(1) For outpatient mental health programs which are designated *Level I* providers pursuant to this Part, grants received for the local fiscal year ended in 2001 for upstate and Long Island based providers, and for the local fiscal year ended in 2001 for New York City based providers, shall be added, if applicable, to the annualized eligible deficit approved in the calculation of the previous supplemental rate.

(2) The sum of grants received by the provider, as recalculated under paragraph (1) of this subdivision, shall be divided by the projected number of annual visits to the provider's designated programs. The projected number of annual visits shall be calculated as follows:

(i) The combined total of outpatient mental health program visits reimbursed by medical assistance for each provider shall be calculated by using the average number of visits provided in the most recent three fiscal years multiplied by 90.9 percent. These visits shall include all visits reimbursed by Medicaid, including visits partially reimbursed by Medicare. Providers, who in the three most recent fiscal years earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted to reflect the lower supplemental revenue earned on Medicare/Medicaid dually eligible visits. The calculation of the Medicare/Medicaid adjusted visits shall be based on the percentage of Medicaid supplemental payments earned on Medicare/Medicaid dually eligible visits provided during the three most recent fiscal years and the number of dually eligible visits provided in the three most recent fiscal years. The Medicare/Medicaid adjusted visits are calculated by multiplying the projected annual volume of dually eligible visits by the average percentage of Medicaid supplemental revenue earned on these visits during the three most recent fiscal years.

(ii) Rates calculated pursuant to subparagraph (i) of this paragraph are subject to appeal by the local governmental unit, or by the provider with the approval of the local governmental unit. Appeals pursuant to this paragraph shall be made within one year after receipt of initial notification of the most recent supplemental reimbursement rate calculation. However, under no circumstances may the recalculated rate be higher than the rate cap set forth in paragraph (3) of this subdivision.

(3) The supplemental rate for a provider operating [an] a *licensed* outpatient mental health program shall be the lesser of the rate calculated in paragraph (2) of this subdivision or a rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget[, provided, however, the supplemental rate of an Article 31 provider which operates a comprehensive outpatient program shall not be less than an amount that, when added to the base fee, yields an amount that is less than the total of the corresponding fee and supplemental reimbursement for any provider which is not eligible to be designated as comprehensive outpatient program].

(d) In order to recoup supplemental payments for those visits in excess of 110% of the number of visits used to calculate the supplemental rate for a *Level I* provider, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year.

(h) The Office of Mental Health may amend the supplemental rate and/or the comprehensive outpatient program allocation to account for program changes required by the Office of Mental Health, local governmental unit, or other administrative agency, or approved by the commissioner pursuant to Part 551 of this Title.

(1) When a *Level I* provider receives reimbursement under this part which is less than its comprehensive outpatient program allocation in a local fiscal year (beginning with Calendar Year 2001 for upstate or Long Island based providers or Local Fiscal Year 2000-01 for New York City based providers), the local governmental unit may, subject to the approval of the Commissioner of Mental Health and the Director of the Division of Budget, allocate any amount of the provider's comprehensive outpatient program reimbursement which is less than its comprehensive outpatient

program allocation to [one or more designated comprehensive outpatient program allocation to] one or more designated *Level I* comprehensive outpatient programs within the same county beginning in the following fiscal year. In making such adjusted allocations, the local governmental unit shall consider the extent to which a provider receiving an additional allocation is in compliance with the program requirements set forth in Section 592.7 of this Part. This adjusted allocation process shall be accomplished through the revision of each affected provider's comprehensive outpatient program allocations for the previous fiscal year. In no case shall such adjusted allocation be less than the amount of comprehensive outpatient program reimbursement received by a provider consistent with its applicable comprehensive outpatient program allocation received in either the 2000 local fiscal year or the local fiscal year before the year in which such reimbursement is received, whichever amount is less.

(2) When a provider closes down one or more program location, but continues to operate the other locations of the designated program, the supplemental revenue to the designated program shall be reduced proportionately by the number of Medicaid visits associated with the closed location(s). The State share of the reduced Medicaid supplemental revenue may be allocated to the county in the form of additional local assistance grants, or the visits previously reimbursed to the closed program location(s) may be added to the visits of one or more other designated outpatient programs of the same outpatient category in the same county.

(i) When a designated *Level I* program has ceased or will cease to provide services or the local governmental unit has not designated an eligible or previously designated *Level I* program and discontinued all grants to that program, visits reimbursed under the medical assistance program to that program may be added to the visits of one or more other outpatient programs of the same outpatient category in the same county to be included in the supplemental rate adjustments pursuant to subdivisions (e)-(g) of this section subject to the following:

(1) the local governmental unit must recommend such consideration to the commissioner prior to June 1, 1991 for the initial year and the commencement of the local fiscal year in all succeeding years;

(2) the recommendation must specify the volume of visits to be allowed to each alternative provider;

(3) each alternative provider must be licensed in the same program category as the eligible provider;

(4) each alternative provider must be eligible to be designated prior to the local governmental unit's recommendation under this subdivision;

(5) the local governmental unit recommendation may be less than, but may not exceed, the volume of visits reimbursed, in the base year under the medical assistance program, to the provider not designated as a *Level I* comprehensive outpatient program;

(6) the allowance of additional visit volume approved by the commissioner under this subdivision may be less than the volume recommended by the local governmental unit where the calculated supplemental rate of payment for the alternative provider is greater than that for the provider not designated. In no instance will the supplemental revenue to all designated providers in the county exceed the estimated supplemental revenue to all eligible providers in the county; and

(7) if a program ceases to provide services in all program locations it shall not be eligible for designation as a *Level I* comprehensive outpatient program or for any additional local assistance grants for the period of at least one local fiscal year following the year during which the program ceased to provide services.

(j) When a [designated] *comprehensive outpatient* program has ceased or will cease to provide services and the local governmental unit determines that no existing, [designated] *comprehensive outpatient* program of the same outpatient category within the same county is capable of providing services to the clients of the program ceasing operation, the local governmental unit, with the approval of the commissioner, may designate any not-for-profit or municipally operated agency operating an outpatient mental health program of the same category as a comprehensive outpatient program. When no agency operating an outpatient program in the same category is available, the local governmental unit may, with the approval of the commissioner, designate an agency already designated in another outpatient program category which has not previously been licensed in the category of the closing program. The designation of such program shall not be effective until the designated program commences operation within the designating county. Supplemental rates or supplemental rate adjustments for successor programs designated pursuant to this subdivision shall be calculated as follows:

(1) Supplemental rates shall be based upon the lesser of the successor program's budgeted eligible grant amount recommended by the local

governmental unit and approved by the Office of Mental Health pursuant to Part 551 of this Title, or the supplemental revenue and Medicaid visit volume used to establish the supplemental rate for the closing provider for the year of closure.

(2) The rate established in paragraph (1) of this subdivision shall be approved on an interim basis until receipt of a consolidated fiscal report including one complete local fiscal year of operation as a comprehensive outpatient program, after which the Office of Mental Health shall recalculate the final supplemental rate or supplemental rate adjustments subject to the limitations in paragraph (1) of this subdivision.

(3) Such rates shall not be otherwise limited by the provisions of paragraphs (i)(3) and (4) of this section.

(k) Each general hospital, as defined by Article 28 of the Public Health Law, which is operated by the New York City Health and Hospitals Corporation, which received a grant pursuant to Section 41.47 of the Mental Hygiene Law for the local fiscal year ending in 1989 shall be designated as a *Level I* comprehensive outpatient program for all outpatient programs licensed pursuant to [Parts 585 and] Part 587 of this Title. For purposes of calculating supplemental Medicaid rates pursuant to this Part, all such programs in the New York City Health and Hospitals Corporation are combined for a uniform supplemental Medical Assistance program rate.

7. Subdivisions (c) and (d) of Section 592.9 of Title 14 NYCRR are amended to read as follows:

(c) A program which the Commissioner determines has failed to substantially comply with the requirements of this section or any other requirements established by the local governmental unit shall be referred to the local governmental unit with a recommendation that it not be designated as a *Level I* comprehensive outpatient program for the subsequent local fiscal year.

(1) The local governmental unit may designate such provider of services as a *Level I* comprehensive outpatient program for the following local fiscal year, but shall notify the Commissioner of such designation and the reason(s) therefore.

(2) The Commissioner shall review such program prior to the end of the following local fiscal year. If the program is found to have continued to have failed to substantially comply with the requirements of this Part, or any other requirements established by the local governmental unit, the Commissioner shall instruct the local governmental unit that such provider of services shall not be designated as a *Level I* comprehensive outpatient provider for the next local fiscal year.

(3) A determination that a provider of services shall not be designated as a *Level I* comprehensive outpatient program does not affect the status of such provider of services as a licensed provider of outpatient services.

(d) A provider of services that has been discontinued as a *Level I* comprehensive outpatient program pursuant to Paragraph (c)(2) of this section, may be designated by the local governmental unit as a *Level I* comprehensive outpatient program in the local fiscal year subsequent to the local fiscal year for which such designation was discontinued, providing that the local governmental unit shall provide assurances to the Commissioner that such program has taken such steps as are necessary to substantially comply with the requirements of this Part and all other requirements established by the local governmental unit.

8. A new Section 592.10 is added to Title 14 NYCRR to read as follows:

**§ 592.10 Level II Comprehensive Outpatient Program**

(a) A clinic, continuing day treatment, and/or day treatment provider, other than a provider licensed under Article 28 of the Public Health Law, that has not been designated as a *Level I* Comprehensive Outpatient Program pursuant to this Part shall be eligible to be a *Level II* Comprehensive Outpatient Program, and shall be eligible to receive supplemental medical assistance reimbursement for services rendered. In order to be a *Level II* Comprehensive Outpatient Program and receive supplemental medical assistance reimbursement, a program shall:

(1) agree to provide initial assessment services to all patients referred from inpatient or emergency settings within five business days of referral from such setting;

(2) directly provide or arrange for the provision of case management, home visiting services and other clinically necessary mental health services to maintain patients in programs and minimize patients' absence from treatment;

(3) be determined to be in substantial compliance with all applicable regulations of the Commissioner of Mental Health;

(4) have received a current operating certificate that is of at least a total of six months duration; and

(5) be a current enrollee in good standing in the medical assistance program.

(b) In order to recoup supplemental payments for those visits in excess of the number of visits used to calculate the supplemental rate under this section, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year.

9. A new Section 592.11 is added to Title 14 NYCRR to read as follows:

**§ 592.11 Comparability of fees**

The sum of the base fee, as established in Section 588.13(a)(1) of this Part, and the supplement, calculated in accordance with Section 592.8 of this Part, received by a clinic treatment program that is not licensed under Article 28 of the Public Health Law and which has been designated as a *Level I* comprehensive outpatient program, shall not be less than the base fee and the supplement received by any *Level II* comprehensive outpatient provider in the region.

**Text of proposed rule and any required statements and analyses may be obtained from:** Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocabjdd@omh.state.ny.us

**Data, views or arguments may be submitted to:** Sue Watson, Bureau of Policy, Regulation and Legislation, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: swatson@omh.state.ny.us

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

**Regulatory Impact Statement**

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

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

Subdivision (a) of Section 43.02 of the Mental Hygiene Law grants the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law.

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

Chapter 54 of the Laws of 2006 provides funding appropriations in support of programs not formerly designated as Comprehensive Outpatient Programs. (Section 1, State Agencies, Office of Mental Health, line 44, page 277.)

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Article 43 of the Mental Hygiene Law gives the Commissioner authority to set certain rates. Under Section 364(3) and 364-a of the Social Services Law, OMH is granted responsibility for standards of care for certain Medicaid funded programs under its jurisdiction.

3. Needs and Benefits: The intent and impact of this regulatory change is to simplify and make more equitable the Medicaid reimbursement which outpatient mental health providers receive. Every provider, and the clients they serve, will either be unaffected by or will benefit from these amendments.

Generally, outpatient Medicaid rates are separated into two components: a base fee and either a COPs supplement or a Non-COPs supplement. COPs providers generally receive a higher base rate than Non-COPs providers. Some providers received neither a COPs nor a Non-COPs component.

COPs providers are required to meet both higher standards than Non-COPs providers. They also must have received State deficit financing when the program was established in 1993. Many Non-COPs providers currently meet many of the standards applicable to COPs providers, but still cannot qualify for COPs reimbursement. These amendments attempt to mitigate this by combining all of the above providers into COPs, leveling up the base fees they receive, and allowing providers previously categorized as Non-COPs to bill for COPs-only visits on behalf of managed care recipients. Providers who were neither COPs nor Non-COPs will now be included as well.

In order to accomplish this, two levels of COPs have been established by this rulemaking. The first level, Level I, contains the current nine special programmatic standards and deficit funding requirement of COPs. The second level, Level II, contains the five special programmatic standards for Non-COPs. Both tiers will receive the same base fees and operate under the same set of billing rules.

4. Costs:

(a) Costs to private regulated parties: There will be no mandated unreimbursed costs to the regulated parties.

(b) Costs to state and local government: The annual state cost for the program is estimated to be \$2,122,500.00. These additional funds are included in an appropriation for the State share of Medicaid. There is no local Medicaid share or other costs for this program.

(c) The cost projection was calculated by adding the \$2,000,000 available in the appropriation for leveling up to the \$122,500 available in the appropriation to address the non-COPS only adjustment, for a total of \$2,122,500.00.

5. Local Government Mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

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

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

8. Alternatives: The only alternative would be inaction. As this initiative has been established and funded in statute, this alternative was rejected, since it is contrary to the intent of the legislation.

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

10. Compliance Schedule: The authority to establish and fund this initiative deemed effective on April 1, 2006, consistent with the enacted budget.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant negative economic impact on small businesses, or local governments. The establishment of this initiative is required by the enacted 2006-2007 state budget.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will have no negative impact on services and programs serving residents of rural counties. Recipients of services in the 44 counties designated as rural counties by the New York State Legislature, as well as non-rural counties will benefit from the establishment of this new statewide program.

**Job Impact Statement**

The proposed amendments to 14 NYCRR will not adversely impact jobs or employment opportunities in New York, nor should these amendments impact existing employees of Comprehensive Outpatient Programs for adults (COPs), non-COPs programs, or other programs under the jurisdiction of OMH. The purpose of this rulemaking is required by the enacted 2006-2007 state budget.

Summary of Proposed Amendments to Minimum Standards Relating to Call-Taker/Dispatcher Training: At its meeting of October 16, 2007, the Board proposed amendments to the minimum standards regarding basic training for call-takers/dispatchers. Currently, the standards require the authority having jurisdiction over the county public safety answering point to maintain accurate and current copies of curricula consisting of course outlines and descriptions, and specific lesson plans for all training courses. This amendment will replace that provision with a new requirement that the authority maintain accurate and current copies of curricula and specific lesson plans that are completed through an in-house training program. A minimum 45-day comment period follows this Notice, during which all interested persons and organizations are invited to comment.

For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: 518-474-6746.

Text of proposed rule: Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Sections 5201.3(a)(6), 5201.3(b)(6) and 5201.4(d) are amended to read as follows:

§ 5201.3 Basic training standards.

(a) Emergency Services Dispatch Training Evaluation Program.

(6) Administrative requirements. The authority shall:

(i) maintain accurate and current copies of curricula consisting of course outlines, descriptions, and specific lesson plans for all training courses that are completed through an in-house training program;

(ii) maintain and make available accurate training records of all trainees, including daily written evaluations.

(b) Classroom and related instruction.

(6) Administrative requirements. The authority shall:

(i) maintain accurate and current copies of curricula consisting of course outlines, descriptions, and specific lesson plans for all training courses that are completed through an in-house training program;

(ii) maintain and make available accurate training records of all trainees, including daily written evaluations.

§ 5201.4 Annual in-service training standards.

(d) Administrative requirements. The authority shall:

(1) maintain accurate and current copies of curricula consisting of course outlines, descriptions, and specific lesson plans for all training courses that are completed through an in-house training program;

(2) maintain and make available accurate training records of all trainees, including daily written evaluations.

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## Power Authority of the State of New York

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### NOTICE OF ADOPTION

**Rates for the Sale of Power and Energy**

**I.D. No.** PAS-28-07-00004-A

**Filing date:** Oct. 30, 2007

**Effective date:** Jan. 1, 2008

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

**Action taken:** Consolidation of production and delivery service tariffs applicable to New York City and Westchester County governmental customers.

**Statutory authority:** Public Authorities Law, section 1005(6)

**Subject:** Rates for the sale of power and energy.

**Purpose:** To streamline and simplify the multiple tariffs into two single tariffs in order to make them more user friendly and easier to understand.

**Substance of final rule:** The City of New York ("City") filed formal written comments in accordance with SAPA. No other comments were received. Power Authority staff reviewed the City's written comments and substantially accepted their recommendations.

Following is a summary of the City's comments and the Power Authority's response.

Issue 1: Rider A - Schedule of Rates for Back-up and Maintenance Power (Section III)

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## New York State 911 Board

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### INFORMATION NOTICE NOTICE OF PROPOSED AMENDMENT

The New York State 911 Board, established pursuant to County Law § 326, is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

- The City commented that even though the Authority does not serve any customer under Rider A, Rider A should be continued for customers that do install on-site generation facilities. The Power Authority will continue to use Rider A.  
The City commented that the Authority should consider amending Rider A to allow the Authority to negotiate discounted Rider A rates where applicable, as many other utilities do. Until a rate redesign study is performed, the production rates stated in Rider A in the Single Tariffs were updated to reflect appropriate production rate increases approved by the Power Authority’s Trustees since 2004.
- The City commented that the tariffs, as written, were unclear in that it could be interpreted that Rider A was a charge in addition to the rates and charges specified for each service classification. The City recommended that the Authority remove all references to Rider A in each service classification and then clarify in Rider A that the back-up charges provided in Rider A are designed to be alternative to the rates and charges specified for each service classification.  
In response to the City’s comments, the Power Authority changed a statement in Section IV of the Single Tariffs, from “Rates and charges under this Service Classification may be subject to Rider A” to “If Rider A applies under this Service Classification, the Rates and Charges under Rider A will replace the above production rates.” The Authority also included the following language in the Applicability section of Rider A of the Single Tariffs: “The rates and charges shown below are substitute rates to the rates and charges specified in Section IV of this tariff.”
- The City asked to define two terms that are not defined in Rider A in the Energy Charge Adjustment (“ECA”) section, “Base Average Energy Cost” and “Base Incremental Energy Cost.” In response, the Power Authority made the ECA provision under Rider A subject to the same ECA provision described in the Single Tariffs (Section VI.A). Accordingly, for Rider A, all components for calculating the ECA are included in Section VI.A. The ECA language in Rider A in the Single Tariffs was modified to reflect this recommendation.

Issue 2: Calculation of the Bill - Components of the Bill (Section III.A)

- The City commented that the term “other” was used in two different contexts: as one of three general types of charges (Production, Delivery Service and Other) and then as a component of Delivery Service that is measured in “Charge Units” of \$/kW-month. With respect to the use of “other” as a Bill Component of the Delivery Service Charge, the City suggested replacing the Charge Units (\$/kW-month) with “various” since the charge units may vary depending on the type of cost being recovered. In response, the Power Authority made this change in the Single Tariffs.

Issue 3: General Provisions Applicable to Production - Minimum Bill (Section VI.B)

- The City recommended that the Power Authority clarify when and how it will determine to issue a minimum bill for unmetered service. Since the purpose of the NYC Single Tariff is not to address how and when data are collected but how the calculation is done, the Power Authority clarified the language on how unmetered service charges will be applied.
- The City commented that there should be language in the termination-of-service provision conditioning termination of service on the requirements of the Customer Supply Contract. In response, the Power Authority included the language “Unless otherwise provided in the Customer Supply Contract” in the Termination of Service paragraph of the Minimum Bill provision in the NYC Single Tariff.

Issue 4: Common Provisions - Rules and Regulations (Section V.A)

- The City suggested the overriding effect of the Long Term Agreement (“LTA”) (with NYC Governmental Customers) be acknowledged. In response, the Power Authority added a third paragraph to Section V.A of the NYC Single Tariff as follows: “In the event of any inconsistencies, conflicts or differences between any provisions of the 2005 Long Term Agreement and any of the agreements or documents referenced in Section V, Common Provisions A.1 and 2, the provisions of the 2005 Long Term Agreement shall govern.” The Power Authority also added similar language to the Westchester County Service Tariff, as appropriate.

The newly consolidated single tariffs for the Power Authority’s New York City and Westchester County Governmental Customers will go into effect on January 1, 2008, along with the 2008 production rates for those

customers, which rates will be presented for the approval of the Power Authority’s Trustees at their December 2007 meeting.

**Final rule as compared with last published rule:** Substantial revisions were made in sections III.A, V.A, VIII, IV, and VI.B.

**Text of rule and any required statements and analyses may be obtained from:** Anne B. Cahill, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

**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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Assessment of Public Comment:**

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

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

**I.D. No.** PAS-33-07-00010-A

**Filing date:** Oct. 30, 2007

**Effective date:** First full billing period following the date of filing this notice.

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

**Action taken:** Amendment of tariffs for the authority’s economic development power programs.

**Statutory authority:** Public Authorities Law, section 1005

**Subject:** Rates for the sale of power and energy.

**Purpose:** To recover the authority’s cost of providing firm power and energy services.

**Text or summary was published** in the notice of proposed rule making, I.D. No. PAS-33-07-00010-P, Issue of August 15, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

**Assessment of Public Comment:**

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

Public Service Commission

NOTICE OF ADOPTION

Tariff Revisions by Mt. Ebo Water Works, Inc.

**I.D. No.** PSC-02-07-00008-A

**Filing date:** Oct. 25, 2007

**Effective date:** Oct. 25, 2007

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

**Action taken:** The commission, on Oct. 17, 2007, adopted an order approving Mt. Ebo Water Works, Inc.’s request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. — Water, to become effective Nov. 1, 2007.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

**Subject:** Water rates and charges.

**Purpose:** To approve an increase in Mt. Ebo Water Works, Inc.’s annual revenues by \$24,174 or 9.6 percent.

**Substance of final rule:** The Commission adopted an order allowing Mt. Ebo Water Works, Inc. to increase annual revenues by \$24,174 or 9.6%,

effective November 1, 2007, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(06-W-1552SA1)

## NOTICE OF ADOPTION

### Water Rates and Charges by Spring Glen Lake Water Company LLC

**I.D. No.** PSC-04-07-00019-A

**Filing date:** Oct. 29, 2007

**Effective date:** Oct. 29, 2007

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

**Action taken:** The commission, on Oct. 17, 2007, adopted an order approving Spring Glen Lake Water Company LLC's (Spring Glen) request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water, to become effective Nov. 1, 2007.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

**Subject:** Water rates and charges.

**Purpose:** To approve an increase of Spring Glen's annual revenues by \$9,004 or 214 percent.

**Substance of final rule:** The Commission adopted an order approving an increase of Spring Glen Lake Water Company LLC's (Spring Glen) annual revenues by \$9,004 or 214%, effective November 1, 2007, and allowing Spring Glen to surcharge its customers \$67.56 semi-annually to initially fund a \$5,000 replenishable, interest-bearing escrow account to cover the cost of extraordinary repairs and/or capital improvements in excess of the amount allowed for repairs in the base rates, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-W-0018SA1)

## NOTICE OF ADOPTION

### Submetering of Electricity by Herbert E. Hirschfeld, P.E.

**I.D. No.** PSC-12-07-00009-A

**Filing date:** Oct. 25, 2007

**Effective date:** Oct. 25, 2007

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

**Action taken:** The commission, on Oct. 17, 2007, adopted an order in Case 07-E-0246 approving the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Savoy Park, to submeter electricity at, 2300 5th Ave., 15 and 45 139th St., 30 W. 141st St., 60 W. 142nd St., and 620 and 630 Lenox Ave., 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 grant the petition of Herbert E. Hirschfeld, P.E. on behalf of Savoy Park, to submeter electricity at, 2300 5th Ave., 15 and 45 and 139th St., 30 W. 141st St., 60 W. 142nd St., and 620 and 630 Lenox Ave., New York, NY.

**Substance of final rule:** The Commission approved a petition by Herbert E. Hirschfeld, P.E., on behalf of Savoy Park, to submeter electricity at, 2300 5th Avenue, 15 and 45 139th Street, 30 West 141st Street, 60 West 142nd Street, and 620 and 630 Lenox Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-0246SA1)

## NOTICE OF ADOPTION

### Submetering of Electricity by Belkin, Burden, Wenig & Goldman, LLP

**I.D. No.** PSC-21-07-00006-A

**Filing date:** Oct. 25, 2007

**Effective date:** Oct. 25, 2007

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

**Action taken:** The commission, on Oct. 17, 2007, adopted an order in Case 07-E-0488 approving the petition filed by Belkin, Burden, Wenig & Goldman, LLP on behalf of 219 E. 69th St. to submeter electricity at 219 E. 69th St., 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 grant the petition of Belkin, Burden, Wenig & Goldman, LLP on behalf of 219 E. 69th St. to submeter electricity at 219 E. 69th St., New York, NY.

**Substance of final rule:** The Commission approved a petition by Belkin, Burden, Wenig & Goldman, LLP on behalf of 219 East 69th Street to submeter electricity at 219 East 69th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-0488SA1)

## NOTICE OF ADOPTION

### Submetering of Electricity by 90 William Street Development Group, LLC

**I.D. No.** PSC-29-07-00024-A

**Filing date:** Oct. 25, 2007

**Effective date:** Oct. 25, 2007

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

**Action taken:** The commission, on Oct. 17, 2007, adopted an order in Case 07-E-0756 approving the petition filed by 90 William St. Development Group, LLC to submeter electricity at 90 William St., 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 grant the petition of 90 William St. Development Group, LLC to submeter electricity at 90 William St., New York, NY.

**Substance of final rule:** The Commission approved a petition by 90 William St. Development Group, LLC to submeter electricity at 90 William Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-0756SA1)

## NOTICE OF ADOPTION

### Submetering of Electricity by 855 Realty Owner, LLC

**I.D. No.** PSC-30-07-00006-A

**Filing date:** Oct. 25, 2007

**Effective date:** Oct. 25, 2007

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

**Action taken:** The commission, on Oct. 17, 2007, adopted an order in Case 07-E-0765 approving the petition filed by 855 Realty Owner, LLC to submeter electricity at 855 Sixth Ave., 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 grant the petition of 855 Realty Owner, LLC to submeter electricity at 855 Sixth Ave., New York, NY.

**Substance of final rule:** The Commission approved a petition by 855 Realty Owner, LLC to submeter electricity at 855 Sixth Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-0765SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Unblocking Caller ID Information by the City of New York

**I.D. No.** PSC-46-07-00003-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition filed by the City of New York concerning the unblocking of caller ID information for 211 dialed calls in New York City.

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

**Subject:** Unblocking caller ID information for 211 dialed calls in New York City.

**Purpose:** To require telephone companies to unblock caller ID information on calls placed to the 211 call center in New York City.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition filed by the City of New York concerning the unblocking of Caller ID information for 211 dialed calls in the City of New York. The Federal Communications Commission assigned the 211 abbreviated dialing code to provide the public with access to organizations providing community information and referral services.

**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.  
(07-C-1091SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Submetering of Electricity by 735 Avenue of the Americas, LLC

**I.D. No.** PSC-46-07-00005-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 735 Avenue of the Americas, LLC, to submeter electricity at 101 W. 24th St., 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 735 Avenue of the Americas, LLC, to submeter electricity at 101 W. 24th St., New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 735 Avenue of the Americas, LLC, to submeter electricity at 101 West 24th Street, New York, New York, located in the territory of Consolidated Edison Company of New York.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-1276SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Dishonored Payment by Corning Natural Gas Corporation

**I.D. No.** PSC-46-07-00006-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 Corning Natural Gas Corporation (Corning) to make various changes in the rates,

charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 4—Gas, to become effective Jan. 22, 2008.

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

**Subject:** Dishonored payment.

**Purpose:** To revise Corning's dishonored check charge.

**Substance of proposed rule:** The Commission is considering Corning Natural Gas Corporation's (Corning) request to revise its gas tariff schedule, P.S.C. No. 4, to change its dishonored check charge from \$10.00 to \$23.00. The proposed filing has an effective date of January 22, 2008. The Commission may approve, reject or modify, in whole or in part, Corning's request.

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

**Data, views or arguments may be submitted to:** Jaelyn 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.

(07-G-1282SA1)

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The agency received no public comment.

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## Racing and Wagering Board

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### NOTICE OF ADOPTION

#### Failure to Finish a Harness Race

**I.D. No.** RWB-31-07-00009-A

**Filing No.** 1181

**Filing date:** Oct. 29, 2007

**Effective date:** Nov. 14, 2007

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

**Action taken:** Amendment of section 4117.2(c) of Title 9 NYCRR.

**Statutory authority:** Racing, Part-Mutuel Wagering and Breeding Law, sections 101 and 301

**Subject:** Horse's failure to finish a race in harness racing.

**Purpose:** To amend the board's rule, specifically sections 4117.2, subdivision (c), as it pertains to a horse's failure to finish in a harness race. The existing rule fails to take into consideration that a horse may not finish a harness race as a result of a break from its gait. To allow judges to determine the appropriate order of finish should a horse break from its gait, and to eliminate any confusion for the judges, horsemen and betting public, the proposed amendment to 9E NYCRR 4117.2(c) is being offered. The proposed amendments seek to clarify and eliminate the confusion of this process for the presiding judges, their designees and the horsemen. This rule is necessary for the safety of the drivers, who can now seek a safe inside a clearance rather than attempt to veer right as they try to find clearance. This rule will benefit the betting public by allowing their horse to remain in a race than suffer disqualification. The rule is beneficial to overall racing because a horse that has broken gait will have a clear course of refuge and won't become a disruption to other contending horses. Finally, public confidence in part-mutuel wagering will be maintained because judges will be allowed to make common sense determination as to order of finish based on common sense principals shared with the betting public, rather than be bound by over-restrictive rules that cannot address every possible circumstance during the course of a harness race.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-31-07-00009-P, Issue of August 1, 2007.

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