# RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency

01 -the *State Register* issue number

96 -the year

00001 -the Department of State number, assigned upon receipt of notice

E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; 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.

## Crime Victims Board

### NOTICE OF WITHDRAWAL

**Direct Reimbursement for the Costs of Certain Services**

**I.D. No.** CVB-06-07-00024-W

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

***Action taken:*** Notice of proposed rule making, I.D. No. CVB-06-07-00024-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on February 7, 2007.

***Subject:*** Direct reimbursement for the costs of certain services related to a sexual assault forensic exam.

***Reason(s) for withdrawal of the proposed rule:*** Objection to proposed consensus rule making.

## New York State Energy Research and Development Authority

### NOTICE OF ADOPTION

**Minimum Energy Efficiency Standards**

**I.D. No.** ERD-40-06-00002-A
**Filing No.** 314
**Filing date:** March 15, 2007
**Effective date:** April 4, 2007

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

***Action taken:*** Amendment of Part 506 of Title 21 NYCRR.

***Statutory authority:*** Energy Law, section 5-108-a, Public Authorities Law, section 1855(4); and State Administrative Procedures Act, section 102

***Subject:*** Minimum energy efficiency standards for energy using products purchased by or for the State and State agencies.

***Purpose:*** To establish minimum energy efficiency standards for appliances and energy using products purchased by or for the State or agency thereof.

***Text of final rule:*** See Appendix in the back of this issue.

***Final rule as compared with last published rule:*** Nonsubstantive changes in section 506.6 Referenced Material - box 8 re NEMA had referenced 2003 rather than 2006 and box 20 referenced Appendices J1 rather than Appendix J1.

***Text of rule and any required statements and analyses may be obtained from:*** Mitchell Khosrova, Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203, (518) 862-1090 ext. 3380, e-mail: mk2@nyserda.org

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***
None of the summary text is effected by these changes so that statements will not be amended.

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

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

**Freedom of Information Law Regulations**

**I.D. No.** ERD-14-07-00004-P

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

***Proposed action:*** This is a consensus rule making to amend sections 500.1, 501.2(a), 501.3, 501.6(f), 501.8(c) and (e), 502.2(d)-(g), 502.3(a) and (c)(ii), (v), (vi), (vii) and (x), 502.4, 502.6(b), 504.2(e), 505.3(b), 505.5, 505.8(a)(2)(ii), 505.9(a) and (c) of Title 21 NYCRR.

***Statutory authority:*** Public Authorities Law, sections 1855(4) and 1852(3); Public Officers Law, section 87

***Subject:*** Freedom of Information Law regulations and the authority's general regulations.

***Purpose:*** To amend the authority's Freedom of Information Law regulations and general regulations by updating the authority's address and substituting officer titles.

***Text of proposed rule:*** § 500.1 Certification and transmittal of minutes

NYSERDA Part 500, Procedures, Section 500.1 Certification and transmittal of minutes shall be amended to read as follows:

Except as provided in section 500.2 of this Part, the secretary of the authority or, in the absence or disability of the secretary, the [chairman] *General Counsel* of the authority, shall, as soon as practical after each meeting of the authority, certify a copy of the minutes of such meeting and transmit the same to the Governor of the State of New York at the Executive Chamber in Albany.

§ 501.2 Designation of records access officer

NYSERDA Part 501, Public Access to Records, Section 501.2 Designation of records access officer, subdivision (a) shall be amended to read as follows:

(a) The [chairman] *President and Chief Executive Officer* of the authority is responsible for insuring compliance with the regulations herein, which apply to records maintained or submitted to the authority pursuant to its power and duties under its enabling act[, and designates the following person]. *The President and Chief Executive Officer shall designate an authority employee to serve* as records access officer[:]. *Communications to the Records Access Officer should be directed to:*

Records Access Officer
NYS Energy Research and Development Authority
[286 Washington Avenue Extension]
*17 Columbia Circle*
Albany, NY 12203-6399

§ 501.3 Location

NYSERDA Part 501, Public Access to Records, Section 501.3 Location shall be amended to read as follows:

Records maintained at the Albany office shall be available for public inspection and copying at [286 Washington Avenue Extension] *17 Columbia Circle* Albany, New York; and records maintained at the West Valley office shall be available for public inspection and copying at[:

Western New York Nuclear Service Center
10282 Rock Springs Road]
*9030 Route 219*
West Valley, New York *14171*

§ 501.6 Trade secret designation

NYSERDA Part 501, Public Access to Records, Section 501.2 Trade secret designation, subdivision (f) shall be amended to read as follows:

(f) A denial of an exception from disclosure under subdivision (e) of this section and a denial of access to a record may be appealed by the person submitting the information or requesting the record within seven business days of receipt of the written notice denying the request by filing a written appeal from the determination with the [chairman] *President and Chief Executive Officer* of the authority. The appeal shall be determined within 10 business days of the receipt of the appeal. Written notice of the determination shall be served upon the person requesting the record, the person who requested the exception, and the Committee on Open Government. The notice shall contain a statement of the reasons for the determination.

§ 501.8 Denial of access to records

NYSERDA Part 501, Public Access to Records, Section 501.2 Denial of access to records, subdivisions (c) and (e) shall be amended to read as follows:

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

[Chairman]
*President and Chief Executive Officer*
New York State Energy Research and Development Authority
[286 Washington Avenue Extension]
*17 Columbia Circle*
Albany, NY 12203-6399
(518) 862-1090.

(e) The individual designated to hear appeals shall inform the requester of his decision, in writing, within seven business days of his receipt of an appeal. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation, consistent with the purpose of the exemption, of how the exemption applies to the records withheld, and the reasons for asserting it. A denial in whole or in part shall also inform the requester of his right to seek judicial review of the authority's final determination. The [chairman] *President and Chief Executive Officer* may ask the requester for an extension of time to render the final determination. The [chairman] *President and Chief Executive Officer* shall inform the requester of the reason for the request for the extension and of the date upon which the final determination may be expected.

§ 502.2 Definitions

NYSERDA Part 502, Reports by Generators of Low Level Radioactive Waste, Section 502.2 Definitions, subdivisions (d), (e), (f) and (g) shall be amended to read as follows:

(d) "Director" means the Program Director, [Radioactive Waste Management Program] *Energy Analysis,* or his designee, New York State Energy Research and Development Authority, [Building 2, Empire State Plaza, Albany, NY 12223] *17 Columbia Circle, Albany, NY 12203-6399.*

(e) "Generate" means to produce or cause the production of, or to engage in an activity which otherwise results in the creation or increase in the volume *or activity,* of low-level radioactive waste.

(f) "Generator" means a person who by his actions within New York, or through the actions within New York of any agent, employee, or independent contractor, generates low-level radioactive waste. For purposes of this Part, a person who only provides a service by arranging for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste generated by others within or outside of New York is a generator only if and to the extent that such person himself generates low-level radioactive waste as a result of such activities. In such event, such person shall submit a report, pursuant to section 502.3, only for the low-level radioactive waste such person himself generates.

(g) "Licensed LLRW disposal facility" means any of the three *existing commercial* disposal facilities [existing upon the effective date of these regulations] at Barnwell, South Carolina, Richland, State of Washington and [Beatty, Nevada] *Clive, Utah.*

§ 502.3 Reports

NYSERDA Part 502, Reports By Generators of Low-Level Radioactive Waste, Section 502.3 Reports, subdivision (a), and subdivision (c), subsections (ii), (v), (vi), (vii), and (x) shall be amended to read as follows:

(a) No later than [April 27, 1987, and no later than] March 1 of each year [thereafter], each generator shall submit to the Director a report (one copy), containing the information set forth in paragraph (c) of this section, for the preceding calendar year; provided, that if a generator generated low-level radioactive waste at facilities located more than twenty-five miles apart, or at facilities located twenty-five miles or less apart for which separate authorizations are held, issued by the operator of a licensed LLRW disposal facility (e.g., site use permit) or the host state in which a licensed LLRW disposal facility is located, which authorize transfer of LLRW to a licensed LLRW disposal facility, the generator shall submit a separate report (one copy) for each such facility.

(c) (ii) name, principal office address (and, if different, address of the facility at which LLRW was generated), *e-mail address, if available,* and telephone number of the generator;

(c) (v) name, title, *e-mail address, if available,* and telephone number of the individual who prepared the report;

(c) (vi) identification of any and all radioactive material and nuclear facility licenses issued by the United States Nuclear Regulatory Commission, the New York State Department of Health, [the New York State Department of Labor], or the New York City Department of Health *and Mental Hygiene* under which LLRW is generated, including identification of the respective licensing agency;

(c) (vii) identification of any and all authorizations held by the generator, issued by the operator of a licensed LLRW disposal facility (e.g., site use permit) or the host state in which a licensed LLRW disposal facility is located, which authorize transfer of LLRW to [a] *its respective* licensed LLRW disposal facility;

(c) (x) a description, including, *but not limited to,* the capacity in terms of volume of LLRW, of any facilities or parts thereof which the generator has dedicated to the storage of LLRW for periods in excess of 90 days prior to transfer, either directly or through a broker or agent, to a licensed LLRW disposal facility, and the volume of LLRW stored by the generator in such facilities at the end of the reporting period;

§ 502.4 Registry and Forms

NYSERDA Part 502, Reports by Generators of Low Level Radioactive Waste, Section 502.4 Registry and Forms shall be amended to read as follows:

Commencing September 1, 1987, the Director shall maintain and update annually a registry of generators which have submitted reports for the

preceding calendar year. Commencing November 1, 1987 and by [November 1] *January 15* of each year thereafter, the Director shall forward [a blank reporting form] *instructions for obtaining reporting forms* to each generator listed on the most recent registry, at the address indicated on the registry. The foregoing notwithstanding, each generator, including new generators, shall be responsible for obtaining blank reporting forms from the Director.

§ 502.6 Materials incorporated by reference

NYSERDA Part 502, Reports by Generators of Low Level Radioactive Waste, Section 502.6 Materials incorporated by reference, subdivision (b) shall be amended to read as follows:

(b) The Federal provisions are set forth in subpart D, entitled "Technical Requirements for Land Disposal Facilities," of Part 61, entitled "Licensing Requirements for Land Disposal of Radioactive Waste," of the rules of the United States Nuclear Regulatory Commission, published in the first volume of title 10, entitled "Energy," of the Code of Federal Regulations, containing parts 0 to 199, revised as of January 1, 1986, on pages 645-647 of such volume. The publisher of the volume is the Office of the Federal Register, National Archives, and Records Administration. A copy of the volume may be obtained by [writing to the Superintendent of Documents,] *contacting the* U.S. Government Printing Office, Washington, DC 20402. A copy of the volume is available for public inspection and copying at the offices of the authority, located at [Building 2, Empire State Plaza, Albany, NY 12223] *17 Columbia Circle, Albany, NY 12203-6399.*

§ 504.2 Definitions

NYSERDA Part 504, Prompt Payment Policy Statement, Section 504.2, Definitions, subdivision (e) shall be amended to read as follows:

(e) Designated payment office means the Office of the Authority's Controller, located at [286 Washington Avenue Extension, Albany, New York 12203] *17 Columbia Circle, Albany, New York 12203-6399.*

§ 505.3 Assignment of responsibilities

NYSERDA Part 505, Personal Privacy Protection, Section 505.3, Assignment of responsibilities, subdivision (b) shall be amended to read as follows:

(b) The address of the Privacy Compliance Officer is New York State Energy Research and Development Authority, [286 Washington Avenue Extension,] *17 Columbia Circle,* Albany, NY 12203-6399.

§ 505.5 Location

NYSERDA Part 505, Personal Privacy Protection, Section 505.5, Location shall be amended to read as follows:

Records containing personal information shall be made available for public inspection and copying at [286 Washington Avenue Extension] *17 Columbia Circle,* Albany, NY 12203-6399.

§ 505.8 Amendment of records and personal information

NYSERDA Part 505, Personal Privacy Protection, Section 505.8, Amendment of records and personal information, subdivision (a), paragraph (2), subsection (ii) shall be amended to read as follows:

(a)(2)(ii) notify the data subject that an appeal of the decision may be made to the [chairman] *President and Chief Executive Officer* of the authority at the address set forth in section 505.3(b) of this Part.

§ 505.9 Appeal of a denial of a request for access to a record or a denial of a request for correction of a record

NYSERDA Part 505, Personal Privacy Protection, Section 505.9, Appeal of a denial of a request for access to a record or a denial of a request for correction of a record, subdivision (a) and (c) shall be amended to read as follows:

(a) Any data subject denied access to a record or personal information or denied a request to amend or correct a record or personal information may, within 30 days of such denial, appeal in writing to the [chairman] *President and Chief Executive Officer* of the authority.

(c) Within 7 business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the [chairman] *President and Chief Executive Officer* shall:

***Text of proposed rule and any required statements and analyses may be obtained from:*** Sara L. LeCain, Assistant Counsel, New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399, (518) 862-1090 ext. 3423, e-mail: sll@nyserda.org

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

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

***Consensus Rule Making Determination***

The New York State Energy Research and Development Authority ("NYSERDA") submits this proposed rule making as a consensus rule. Pursuant to the State Administrative Procedure Act § 102(11), a rule may be proposed on an expedited basis when no person is likely to object to the rule because it is merely a technical amendment and not a substantive change.[1] This proposed rule making focuses on address changes and position designations but does not amend the main procedures described under the regulations.

First, the NYSERDA office addresses listed in the New York Codes, Rules, and Regulations ("NYCRR") are outdated.[2] Therefore, NYSERDA would like to amend the regulations to allow for notification to the requester as to the appropriate location for addressing correspondence and reviewing records. These amendments are technical, as they only change the address information but do not amend the procedure for requesting records.[3]

The second set of amendments addresses recent amendments to the Public Authorities Law, which redefined the positions of the Chairman and the President.[4] The Chairman, in addition to presiding over all Board meetings, is now considered the liaison between the Members of the Board and NYSERDA staff. The President has been deemed the Chief Executive Officer in charge of all executive and administrative functions, such as the administration and disclosure of records.[5] As a result of these amendments, modifications must be made with respect to NYSERDA regulations for accessing records. These changes merely substitute the term "Chairman" for the term "President and Chief Executive Officer" in the named sections but will leave the main procedures intact.[6]

Next, NYSERDA would like to amend 21 NYCRR § 500.1, which grants the Chairman the ability to certify the minutes of the Authority and submit the minutes to the Governor for approval in the event that the Secretary of the Authority is absent. This process was implemented at a time when NYSERDA had an on-site, full-time Chairman. In order to facilitate the certification of the minutes, the term "Chairman" will be replaced by the term "General Counsel," which is an on-site, full-time position. Again, these changes are not substantive, and the main procedures will remain intact.[7]

Finally, NYSERDA would like to amend certain portions of the regulations regarding Low-Level Radioactive Waste. Specifically, the regulations have been updated to include all existing commercial disposal facilities.[8] Additionally, certain grammatical edits have been made.[9]

For these reasons, NYSERDA submits that the changes proposed under this rule making are merely technical amendments, as they do not substantively alter the purpose and scope of the operating regulations and procedures of the Authority.

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[1] N.Y. St. Admin. P. Act § 102(11)(2007).

[2] *See* 21 NYCRR § 501.2(a) (2006); 21 NYCRR 501.3 (2006; 21 NYCRR 501.8(c) (2006); 21 NYCRR 502.2(d) (2006); 21 NYCRR 502.6(b) (2006); 21 NYCRR 504.2(e) (2006); 21 NYCRR 505.3 (b) (2006); 21 NYCRR 505.5 (2006).

[3] *See* Proposed Rule Text (attached as a separate file).

[4] N.Y. Pub. Auth. Law § 1852(3) (2006).

[5] Id.

[6] *See* Proposed Rule Text (attached as a separate file).

[7] Id.

[8] Id.

[9] Id.

***Job Impact Statement***

This rule making does not require a Job Impact Statement as the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) as the changes are merely technical and do not substantively alter the purpose or scope of the current regulations.

# Department of Environmental Conservation

## EMERGENCY RULE MAKING

### Architectural and Industrial Maintenance Coatings

**I.D. No.** ENV-49-06-00005-E
**Filing No.** 305
**Filing date:** March 15, 2007
**Effective date:** March 15, 2007

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

***Action taken:*** Amendment of Part 205 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0301 and 19-0305

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

***Specific reasons underlying the finding of necessity:*** To achieve the reductions of emissions of volatile organic compounds necessary to demonstrate attainment with the ozone national ambient air quality standards. Attainment of this standard is necessary to protect the public health and welfare.

***Subject:*** Architectural and industrial maintenance coatings.

***Purpose:*** To end the small manufacturer exemption on Dec. 31, 2006 and establish a sell-through end date of May 15, 2007 to eliminate the unlimited sell-through of non-complying coatings manufactured before Jan. 1, 2005.

***Text of emergency rule:*** Part 205, Architectural and Industrial Maintenance (AIM) Coatings

Sections 205.1 through 205.2 remain unchanged.

Section 205.3 (a) is amended to read as follows:

Section 205.3 Standards.

(a) 'VOC content limits.' Except as provided in [subdivision] *subdivisions* (b) *and (g)* of this section, no person shall manufacture, blend, or repackage for sale within the State of New York, supply, sell, or offer for sale within the State of New York or solicit for application or apply within the State of New York any architectural coating manufactured on or after January 1, 2005 which contains volatile organic compounds in excess of the limits specified in the following Table of Standards. Limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. 'Manufacturer's maximum recommendation' means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

The remainder of section 205.3(a) remains unchanged.

Sections 205.3(b) through 205.3(f) remain unchanged.

New Section 205.3(g) is added to read as follows:

*(g) 'Sell Through of Coatings.' A coating manufactured prior to January 1, 2005, or previously granted an exemption pursuant to Section 205.7, may be sold, supplied, or offered for sale until May 15, 2007, so long as the coating complied with standards in effect at the time the coating was manufactured.*

Sections 205.4 through 205.7(e) remain unchanged.

Section 205.7 (f) is amended to read as follows:

(f) Any exemption granted under subdivision (d) of this section may remain in effect no later than December 31, [2007] *2006*.

Section 205.7(g) is deleted.

Section 205.7(h) is renumbered as follows:

[(h)]*(g)* Limited exemptions for small AIM coatings manufacturers as approved by the director, Division of Air Resources, Department of Environmental Conservation under this Part, will be submitted to the EPA as State Implementation Plan revisions for approval.

Section 205.8 remains unchanged.

***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. ENV-49-06-00015-P, Issue of November 21, 2006. The emergency rule will expire May 13, 2007.

***Text of emergency rule and any required statements and analyses may be obtained from:*** Daniel S. Brinsko, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8396, e-mail: 205aim@gw.dec.state.ny.us

***Additional matter required by statute:*** Pursuant to Article 8 of the (State Environmental Quality Review Act), a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file.

***Summary of Regulatory Impact Statement***

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). Among other regulatory actions, New York has promulgated regulations designed to limit the VOCs emitted by various paints, stains, and sealers also known as architectural and industrial maintenance coatings (AIM coatings).

The Department now proposes to revise Part 205 to implement two rule changes. First, the Department proposes to modify the provision in section 205.7 whereby small manufacturers could apply for and obtain an exemption from VOC content limits through December 31, 2007, with the option to apply to renew the exemption for an additional three years. This exemption is otherwise known as the small manufacturer's exemption or "SME." By adoption of this regulation on an emergency basis, the Department ended the SME effective December 31, 2006. Second, the Department proposes to include a "sell-through" end date provision so that products manufactured prior to January 1, 2005, or granted a SME, which do not meet Part 205 VOC content limits, cannot be sold indefinitely. Together, these modifications will ensure that the State achieves the VOC emission reductions from AIM coatings needed to address the emission shortfall identified by EPA for the NYCMA in connection with the one-hour ozone NAAQS and that the State can make immediate progress towards attaining the eight-hour ozone NAAQS statewide (although EPA's implementing regulations were vacated by the court, the eight-hour standard is still valid and is a health based standard, so the Department is still obligated under the Clean Air Act to implement measures to meet the NAAQS as expeditiously as practicable).

In 2005, the Department granted SMEs to twenty small manufacturers for specific AIM coatings. The Department has analyzed the information submitted in connection with the SME applications, and has now determined that the SMEs account for approximately 4 tons of VOC emission reductions per ozone season day (tpd) out of the 14 tpd of reductions that were anticipated to be achieved when the VOC content limits in Part 205 took effect in 2005. One of the objectives of this rulemaking is to recover for the 2007 ozone season and thereafter the 4 tpd of VOC emission reductions that were not achieved as a result of the SMEs. In addition to the VOC emission reductions lost due to the SMEs, the Department is concerned about the VOC emissions lost from the continued sale of AIM coatings produced prior to the January 1, 2005 compliance date in Part 205. The VOC content limits in Part 205 do not apply to products manufactured prior to January 1, 2005, only products manufactured on or after that date. In discussions with AIM coatings manufacturers, the Department has learned that some pre-2005 product is still being sold. The Department proposes to add a "sell-through" end date of May 15, 2007, after which all AIM products sold in New York State must comply with the low VOC content limits in Part 205. By eliminating the SMEs and establishing a "sell-through" end date, the Department will be able to demonstrate progress towards attaining both the one-hour and the eight-hour NAAQS for ozone.

The Department is filing an emergency adoption to make these rule revisions effective immediately. Under these revisions, the SMEs ended on December 31, 2006. Manufacturers will have until May 15, 2007 to sell non-compliant products that were manufactured before January 1, 2005 or were granted a SME. The Department realizes, however, that manufacturers granted one or more SMEs will need time to shift their production to compliant coatings. Both large and small manufacturers who were selling non-compliant coatings manufactured before the new VOC standards took effect need time to liquidate their existing inventories or transfer those inventories to states outside of the Ozone Transport Region with less stringent AIM coatings regulations. The adoption of these revisions on an emergency basis ensures that manufacturers have significant advance notice to react to these rule changes in a timely manner and achieve compliance with Part 205 by the "sell-through" end date.

The promulgation of these Part 205 amendments is authorized by the following sections of the Environmental Conservation Law which, taken

together, clearly empower the Department to establish and implement the Program: Section 1-0101; Section 3-0301; Section 19-0103; Section 19-0105; Section 19-0301 and Section 19-0305.

The 2003 amendments to Part 205 included the SME provision that allowed the Department to grant an exemption to a small AIM coatings manufacturer in order to allow more time for the manufacturer to acquire the technology to comply with the new VOC content limits. Twenty-two small manufacturers applied for and twenty received SMEs pursuant to section 205.7. Revised Part 205 was estimated to achieve VOC emission reductions of 14 tons per ozone season day (tpd) and the Department has determined that as a result of granting the SMEs, 4 tpd of VOC emission reductions that had been anticipated were not realized. These emission reductions are essential to the Department's strategy to bring NYCMA into attainment with the NAAQS for ozone. In a letter dated January 27, 2006 from Raymond Werner, Chief, Air Programs Branch, USEPA Region 2 Office, to Dave Shaw, Director Division of Air Resources of DEC, EPA requested an accounting of the shortfall measures to meet the 42 tpd VOC emission reduction shortfall. New York cannot make this demonstration unless it is able to take credit for all of the emission reductions anticipated through implementation of the six "shortfall measures", which included the 14 tpd from Part 205, the AIM Coatings rule.

In addition to evaluating the SME provision, the Department also reviewed a provision that was considered during the last rulemaking but not included in the final adopted rule in 2003. Prior to the emergency adoption of revisions on November 7, 2006, Part 205 allowed the sale of all AIM coatings manufactured prior to January 1, 2005 to continue indefinitely. Because the Department believed that AIM coatings moved quickly through the market (based upon discussions with industry during the rulemaking process), it was believed that there was not a need for a cut-off date. Since adoption of the final rule in 2003, the Department has discovered that some of these products do have long shelf lives and have remained in the market for periods sometimes exceeding two years. Moreover, the Department has also been advised that some manufacturers stockpiled AIM coatings manufactured prior to the rule implementation date of January 1, 2005 to ensure that they could continue to sell 2004 formulations after the revised rule took effect. As a result, it is important to establish a "sell-through" end date to ensure that the entire 14 tpd of VOC emission reductions are realized as soon as possible. The Department now concludes that if a "sell-through" end date is not invoked then noncompliant products will continue to be sold for a long time, and New York State will not realize the full potential of the VOC emission reductions expected during the rulemaking process. The Department's selection of May 15, 2007 as a "sell-through" end date effectively provides the regulated community with a "sell-through" period nearly two and a half years. Also, May 15th corresponds to the beginning of the ozone season, so removing these higher VOC products from the market before the start of the ozone season will improve New York's ability to attain the ozone NAAQS.

There are two types of ozone, stratospheric and ground level ozone. Ozone in the stratosphere is naturally occurring and is desirable because it shields the earth from harmful ultraviolet rays from the sun which may cause skin cancer. Ozone at ground level causes throat irritation, congestion, chest pains, nausea and labored breathing. It aggravates respiratory conditions like chronic lung and heart diseases, allergies and asthma. Ozone damages the lungs and may contribute to lung disease. Even exercising healthy adults can experience 15 percent to 20 percent reductions in lung function from exposure to low levels of ozone over several hours. Children are most at risk from exposure to ozone. Because their respiratory systems are still developing, they are more susceptible than adults. This problem is exacerbated because ozone is a summertime phenomenon. Children are outside playing and exercising more often during the summer which results in children being exposed to ozone more than adults. Outdoor workers are also more susceptible to lung damage because of their increased exposure to ozone.

Implementation of the Part 205 revisions will, in concert with similar regulations adopted by other States and other measures undertaken by New York, lower levels of ozone in New York State and will decrease the adverse public health and welfare effects described above.

The cost of the proposed regulations will mostly affect the twenty SME manufacturers to whom the Department granted a SME. There may be some cost to other manufacturers that still have supplies of AIM coatings manufactured before January 1, 2005, but Department staff expects this to be minor. Large manufacturers who have existing inventories of product manufactured prior to January 1, 2005 will have to ensure that the product is sold before the "sell-through" end date or moved out of New York State for sale in other states which do not have an AIM coatings rule.

Small manufacturers may have increased costs associated with the production of compliant AIM coatings and may experience a reduction in profits to the extent that their sales increased during the SME as a result of their ability to make and sell higher VOC products. These manufacturers must now make and sell complying coatings and accordingly their production costs may increase slightly and they may sell less product. Since compliant formulations are available for all AIM coating categories, however, the Department expects that the financial effects of this rule are beneficial to the overall market since all manufacturers must meet the same VOC content limits.

It should be noted that the impact to consumers is expected to be minimal since there are already a large amount of complying coatings on store shelves (produced by manufactures that did not receive a SME). Competition from these existing complying coatings will likely constrain any price increases as manufacturers will not be able to pass on all of their costs to the consumers. This is likely to control any actual retail price increases.

The Department evaluated several alternatives and determined that the most preferable alternative was to end the SME in December 2006 and the "sell-through" in May 2007. This option provides time for the manufacturers who have products granted a SME or products manufactured prior to January 1, 2005 to "sell-through" any remaining inventory. In particular, ending the "sell-through" by May 15, 2007 allows manufacturers time to liquidate inventory while ensuring that sale of non-complying products is curtailed by the 2007 ozone season. This is the preferred option because it ensures New York can realize the necessary VOC emission reductions.

EPA approved Part 205 into New York's State Implementation Plan on December 13, 2004. As a result of EPA's action, the VOC content limits in Part 205 represent the Federal standards for AIM coatings in New York. EPA has asked New York to demonstrate compliance with the ozone NAAQS. To do this, the Department needs to demonstrate 42 tpd of VOC emission reductions identified by EPA as the shortfall. In order to achieve the 42 tpd of shortfall reductions, the Department adopted six VOC control measures including the Part 205 AIM coatings rule. The AIM coatings rule was expected to produce 14 tpd of the VOC shortfall emission reductions but because of the SME and the unlimited sell-through provisions the Department is not able to make its shortfall demonstration to EPA. These revisions will allow the Department to comply with that federal mandate.

***Regulatory Flexibility Analysis***

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). Among other regulatory actions, New York has promulgated regulations designed to limit the VOCs emitted by various paints, stains, and sealers also known as architectural and industrial maintenance coatings (AIM coatings).

On July 18, 1997, the EPA promulgated the eight-hour ozone national ambient air quality standard (NAAQS). In June of 2004, EPA designated several areas within New York State to be in nonattainment with the eight-hour NAAQS. However, in December 2006, the United States Circuit Court of Appeals for the District of Columbia vacated EPA's eight-hour ozone implementation rule. Based upon that Court decision, New York State is still required to meet the requirements related to the one-hour ambient air quality standard for ozone. Federal regulations require New York State to develop and implement enforceable strategies to get nonattainment areas into attainment by 2007. Since attainment is determined over a three-year period, VOC emission reductions are needed immediately in order to demonstrate attainment in 2007.

The Department of Environmental Conservation (the Department) proposes to revise Part 205 to implement two rule changes. First, the Department proposes to modify the provision in section 205.7 whereby small manufacturers could apply for and obtain an exemption from VOC content limits through December 31, 2007, with the option to apply to renew the exemption for an additional three years. This exemption is otherwise known as the small manufacturer's exemption or "SME." By adoption of this regulation on an emergency basis, the Department ended the SME effective December 31, 2006. Second, the Department proposes to include a "sell-through" provision so that products manufactured prior to January 1, 2005, or granted a SME, and which do not meet Part 205 VOC content limits cannot be sold indefinitely. Together, these modifications will ensure that the State achieves the VOC emission reductions from AIM coatings needed to address the emission shortfall identified by EPA for the NYCMA in connection with the one-hour ozone NAAQS and that the State can make immediate progress towards attaining the eight-hour ozone

NAAQS statewide (although EPA's implementing regulations were vacated by the court, the eight-hour standard is still valid and is a health based standard, so the Department is still obligated under the Clean Air Act to implement measures to meet the NAAQS as expeditiously as practicable).

In 2005, the Department granted a SME to twenty small manufacturers for specific AIM coatings. The Department has analyzed the information submitted in connection with the SME applications, and has now determined that the SMEs account for 4 tons per ozone season day (tpd) out of the 14 tpd of VOC emission reductions that were anticipated to be achieved when the VOC content limits in Part 205 took effect in 2005. One of the objectives of this rulemaking is to recover the 4 tpd of VOC emission reductions that were not achieved as a result of the SMEs. In addition to the VOC emission reductions lost due to the SMEs, the Department is concerned about the VOC emissions lost from AIM coatings produced prior to the January 1, 2005 compliance date in Part 205. The VOC content limits in Part 205 do not apply to products manufactured prior to January 1, 2005, only products manufactured on or after that date. In discussions with AIM coatings manufacturers, the Department has learned that some pre 2005 product is still being sold. The Department proposes to add a "sell-through" end date of May 15, 2007 which would require that only VOC compliant coatings be sold after that date. By eliminating the SMEs and establishing a "sell-through" end date, the Department will be able to demonstrate progress in its efforts to attain both the one-hour and the eight-hour NAAQS for ozone.

The Department has filed an emergency adoption that made these rule revisions effective immediately. Under these revisions, the SMEs ended effective December 31, 2006. Manufacturers will have until May 15, 2007 to sell non-compliant products that were manufactured before January 1, 2005 or were granted a SME. The Department realizes, however, that manufacturers granted one or more SMEs will need time to shift their production to compliant coatings. Both large and small manufacturers who were selling non-compliant coatings manufactured before the new VOC standards took effect need time to liquidate their existing inventories or transfer those inventories to states outside of the OTR with less stringent AIM coatings regulations. The adoption of these revisions on an emergency basis ensures that manufacturers have significant advance notice to react to these rule changes in a timely manner and achieve compliance with Part 205 by the "sell-through" end date.

1. Effects on Small Businesses and Local Governments. No local governments will be directly affected by the revisions to 6 NYCRR Part 205, the Architectural and Industrial Maintenance (AIM) Coatings regulation. Small businesses that manufacture AIM coatings for sale pursuant to a small manufacturer exemption (SME) provision for certain products under section 205.7 had a three year exemption that would have ended on December 31, 2007. With these rule revisions, the SME ended on December 31, 2006. In addition, as a result of the new sell through provision, AIM coatings manufacturers will have until May 15, 2007 to sell products which were grandfathered or received a SME.

2. Compliance Requirements. Local governments are not directly affected by the revisions to 6 NYCRR Part 205. Small businesses which were not granted a SME will face no additional requirements. Manufacturers who were granted a SME will have to comply with the low VOC content limits of Part 205, which may involve reformulating some of their coatings. Contractors and retailers who use or sell AIM simply need to continue to purchase compliant coatings.

3. Professional Services. Local governments are not directly affected by the revisions to 6 NYCRR Part 205. It is not anticipated that small businesses that manufacture architectural coatings will need to contract out for professional services to comply with this regulation. In the few cases where small manufacturers do not already have compliant formulations to replace those SME products complying formulations are available at little or no cost from both the solvent and the raw material suppliers to this industry. See Chemidex.com on the web.

4. Compliance Costs. There are no additional compliance costs for small businesses and local governments as a result of this rule except for the 11 New York State manufacturers granted a SME. Since there are compliant coatings now available in all AIM categories, small businesses and local governments that previously purchased AIM coatings that received a SME, they are not expected to see a price increase for the purchase of compliant AIM coatings.

There may be some cost to other manufacturers that still have supplies of AIM coatings manufactured before January 1, 2005, but the Department expects this to be minor. Manufacturers that have existing inventories of product manufactured before January 1, 2005 will need to ensure that the product is sold before the "sell-through" end date or moved out of New York State for sale in other states which do not have an AIM coatings rule.

The proposed regulations will mostly affect the eleven New York urban/suburban businesses that received an SME for certain products. Some of manufacturers may have increased costs associated with the production of compliant AIM coatings. The Department is aware of some small manufacturers who, after having been granted a SME, were able to increase sales and market share of their products. These manufacturers will now be required to produce compliant coatings which will have to compete in the market place with the compliant coatings of other manufacturers. Consequently, they might experience reduced profits to the extent they cannot maintain the same level of sales with compliant VOC coatings as they did with their higher VOC content coatings. Compliant formulations are available for all coating categories, however, so all manufacturers should be able to access that technology going forward. Department staff believe that the financial effects of this rule are beneficial to the overall market since this rule would no longer provide a market advantage to those companies that received the SMEs or had large inventories of products manufactured before January 2005.

It should be noted that the impact to consumers is expected to be minimal since there are already large amounts of complying coatings on store shelves (produced by manufactures that did not receive a SME). Competition from these existing complying coatings will likely constrain any price increases as manufacturers will not be able to pass on all of their costs to the consumers. This is likely to control any actual retail price increases.

5. Minimizing Adverse Impact. Local governments are not directly affected by the revisions to 6 NYCRR Part 205. The emergency adoption of these revisions ensures that manufacturers have significant advance notice to react to these rule changes in a timely manner and achieve compliance with Part 205 by the "sell-through" end date. The Department has provided four months advance notice of the end of the SME and almost nine months notice of the sell through end date. This will provide manufacturers time to liquidate their existing inventories, or transfer those inventories to non-OTR states.

6. Small Business and Local Government Participation. Since local governments are not directly affected by this regulation, the Department did not contact local governments directly. On September 21, 2005 the Department notified all the manufacturers who had been granted a SME of its intent to end the SME by December 31, 2006, with no extensions. Only two (one New York company) of the twenty companies with SMEs responded and also that those responses were many months after the initial notification. While the one New York company indicated that they would like to see the SME provision remain as well as the ability to sell non-complying manufactured before January 1, 2005, indications are that they now have the ability to reformulate their products to comply with Part 205. The Department has also given official notice of this rulemaking to each of the twenty companies with SMEs.

7. Economic and Technological Feasibility. Local governments are not directly affected by the revisions to 6 NYCRR Part 205. Compliant products are available in all coating categories statewide to meet all consumer needs. The VOC content limits adopted in 2003 were based in large part on the 2000 California Air Resources Boards (CARB) suggested control measure (SCM) for AIM coatings. The SCM is a model AIM coatings rule that is used as a template by the California Air Districts for their AIM coatings regulations. The SCM is based on a 1998 AIM coatings survey by CARB in which they determined the technical feasibility of VOC content limits for each AIM coating category. In effect, the availability of products in a particular coating category at or below a specific VOC content limit indicated the feasibility of that category establishing a standard at that content limit. Since inception of the SCM VOC content limits into California in 2003, there have been no known complaints by small businesses with regards to compliance with the new AIM coatings standards. Likewise, according to CARB, there have been no known small manufacturers to go out of business as a result of the new AIM coatings regulations. By eliminating the SMEs and invoking a "sell-through" end date, this will keep New York State consistent with California as well as the other OTC states that don't have an SME provision.

***Rural Area Flexibility Analysis***

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). Among other regulatory actions, New York has promulgated regulations designed to

limit the VOCs emitted by various paints, stains, and sealers also known as architectural and industrial maintenance coatings (AIM coatings). See 6 NYCRR Part 205.

On July 18, 1997, the EPA promulgated the eight-hour ozone national ambient air quality standard (NAAQS). In June of 2004, EPA designated several areas within New York State to be in nonattainment with the eight-hour NAAQS. However, in December 2006, the United States Circuit Court of Appeals for the District of Columbia vacated EPA's eight-hour ozone implementation rule. Based upon that Court decision, New York State is still required to meet the requirements related to the one-hour ambient air quality standard for ozone. Federal regulations require New York State to develop and implement enforceable strategies to get nonattainment areas into attainment by 2007. Since attainment is determined over a three-year period, VOC emission reductions are needed immediately in order to demonstrate attainment in 2007.

The Department of Environmental Conservation (the Department) proposes to revise Part 205 to implement two rule changes. First, the Department proposes to modify the provision in section 205.7 whereby small manufacturers could apply for and obtain an exemption from VOC content limits through December 31, 2007, with the option to apply to renew the exemption for an additional three years. This exemption is otherwise known as the small manufacturer's exemption or "SME." By adoption of this regulation on an emergency basis, the Department ended the SME effective December 31, 2006. Second, the Department proposes to include a "sell-through" provision so that products manufactured prior to January 1, 2005, or granted a SME, and which do not meet Part 205 VOC content limits cannot be sold indefinitely. Together, these modifications will ensure that the State achieves the VOC emission reductions from AIM coatings needed to address the emission shortfall identified by EPA for the NYCMA in connection with the one-hour ozone NAAQS and that the State can make immediate progress towards attaining the eight-hour ozone NAAQS statewide (although EPA's implementing regulations were vacated by the court, the eight-hour standard is still valid and is a health based standard, so the Department is still obligated under the Clean Air Act to implement measures to meet the NAAQS as expeditiously as practicable).

In 2005, the Department granted a SME to twenty small manufacturers for specific AIM coatings. The Department has analyzed the information submitted in connection with the SME applications, and has now determined that the SMEs account for 4 tons per ozone season day (tpd) out of the 14 tpd of VOC emission reductions that were anticipated to be achieved when the VOC content limits in Part 205 took effect in 2005. One of the objectives of this rulemaking is to recover the 4 tpd of VOC emission reductions that were not achieved as a result of the SMEs. In addition to the VOC emission reductions lost due to the SMEs, the Department is concerned about the VOC emissions lost from AIM coatings produced prior to the January 1, 2005 compliance date in Part 205. The VOC content limits in Part 205 do not apply to products manufactured prior to January 1, 2005, only products manufactured on or after that date. In discussions with AIM coatings manufacturers, the Department has learned that some pre 2005 product is still being sold. The Department proposes to add a "sell-through" end date of May 15, 2007 which would require that only VOC compliant coatings be sold after that date. By eliminating the SMEs and establishing a "sell-through" end date, the Department will be able to demonstrate progress in its efforts to attain both the one-hour and the eight-hour NAAQS for ozone.

The Department is filing an emergency adoption to make these rule revisions effective immediately. Under these revisions, the SMEs ended effective December 31, 2006. Manufacturers will have until May 15, 2007 to sell non-compliant products that were manufactured before January 1, 2005 or were granted a SME. The Department realizes, however, that manufacturers granted one or more SMEs will need time to shift their production to compliant coatings. Both large and small manufacturers who were selling non-compliant coatings manufactured before the new VOC standards took effect need time to liquidate their existing inventories or transfer those inventories to states outside of the OTR with less stringent AIM coatings regulations. The adoption of these revisions on an emergency basis ensures that manufacturers have significant advance notice to react to these rule changes in a timely manner and achieve compliance with Part 205 by the "sell-through" end date.

1. Types and estimated number of rural areas: Rural areas are not particularly affected by the revisions. Part 205 will continue to apply on a statewide basis. This is due in large part to the fact that only eleven of the twenty manufacturers granted SMEs are located in New York State. Of the eleven, nine manufacturers are located in NYCMA, and the other two are located in upstate New York in urban/suburban communities. None of the eleven manufacturers are located in rural communities. The impact to rural consumers, if any, is expected to be minimal since there are already a large number of compliant AIM coatings available for retail sale throughout the state.

2. Reporting, recordkeeping and other compliance requirements: Part 205 will continue to apply on a statewide basis. Rural areas are not particularly affected by the revisions. Reporting, record keeping, and labeling requirements are essentially unchanged since January 2005 when the Part 205 revisions went into effect. Eleven of the twenty SMEs are for businesses located in New York urban or suburban communities. Rural area businesses are not expected to be effected by these revisions. Professional services are not anticipated to be necessary to comply with this rule.

3. Costs: The cost of the proposed regulations will mostly affect the eleven New York urban/suburban businesses that received an SME for certain products. There may be some cost to other manufacturers that still have supplies of AIM coatings manufactured before January 1, 2005, but the Department expects this to be minor. Manufacturers that have existing inventories of product manufactured prior to January 1, 2005 will need to ensure that the product is sold before the "sell-through" end date or moved out of New York State for sale in other states which do not have an AIM coatings rule.

It is expected that the small manufacturers may have increased costs associated with the production of compliant AIM coatings. The Department is aware of some small manufacturers who, after having been granted a SME, were able to increase sales and market share of their products. These manufacturers will now be required to produce compliant coatings which will have to compete in the market place with the compliant coatings of other manufacturers. Consequently, they might experience reduced profits to the extent they cannot maintain the same level of sales with compliant VOC coatings as they did with their higher VOC content coatings. Compliant formulations are available for all coating categories, however, so all manufacturers should be able to access that technology going forward. Department staff believe that the financial effects of this rule are beneficial to the overall market since this rule would no longer provide a market advantage to those companies that received the SMEs or had large inventories of products manufactured before January 2005.

It should be noted that the impact to consumers is expected to be minimal since there are already large amounts of compliant coatings on store shelves (produced by manufactures that did not receive a SME). Competition from these existing compliant coatings will likely constrain any price increases as manufacturers will not be able to pass on all of their costs to the consumers. This is likely to control any actual retail price increases. Since eleven of the twenty SMEs are for businesses located in New York urban or suburban communities, rural area businesses are not expected to be effected by these revisions.

4. Minimizing adverse impact: Part 205 was not anticipated to have an adverse effect on rural areas when it was promulgated in 2003 and took effect in January 2005. To date, the Department is unaware of any particular adverse impacts experienced by rural areas as a result of the promulgation of Part 205 in 2003. Rather, the rule is intended to create air quality benefits for the entire state, including rural areas, through the reduction of ozone forming pollutants. These revisions are not expected to adversely impact on rural areas since many of the products affected are currently not sold in rural areas and compliant products are available in all coating categories statewide to meet all consumer needs. Ending the SMEs by December 31, 2006 and establishing a May 15, 2007 "sell-through" end date ensures a fair and level playing field for all AIM coatings manufacturers and, more importantly, that the State, as a whole, can achieve compliance with the NAAQS for ozone in a timely manner.

5. Rural area participation: Rural areas are not particularly affected by the revisions. Eleven of the twenty SMEs were granted to businesses located in New York, all of which are located in urban or suburban communities and non are located in rural areas. Consequently, the Department did not see a need to reach out to rural communities.

***Job Impact Statement***

1. Nature of impact:

The Department of Environmental Conservation (the Department) proposes to revise Part 205 to implement two rule changes. First, the Department proposes to modify the provision in section 205.7 whereby small manufacturers could apply for and obtain an exemption from VOC content limits through December 31, 2007, with the option to apply to renew the exemption for an additional three years. By adoption of this regulation on an emergency basis, the Department ended the small manufacturers exemption (SME) effective December 31, 2006. These businesses needed to

stop manufacturing non-complying products by December 31st and had to reformulate their AIM coatings to comply with the content limits in Part 205 if they did not already have compliant formulations. The Department is aware that some manufacturers already had compliant formulations and thus were able to make this transition easily. Second, the Department proposes to include a "sell-through" provision so that products manufactured before January 1, 2005, or granted a SME, and which do not meet Part 205 VOC content limits cannot continue to be sold indefinitely. Companies will have until May 15, 2007 to liquidate their existing inventory or move it out of the State. In most cases, manufacturers have already sold all products manufactured before 2005 or will be able to sell such products before May 15, 2007 and will therefore, not be adversely impacted by this rule.

These revisions are not expected to have an adverse impact on jobs and employment opportunities in the State. Part 205 has applied Statewide since it was promulgated in 2003 and it will continue to apply on a statewide basis. Since the VOC content limits went into effect on January 1, 2005, there has been no evidence of an adverse impact on employment as a result of regulating AIM coatings. If anything, these revisions will have a positive economic impact in terms of placing all AIM manufacturers on a level economic playing field.

2. Categories and numbers affected: This rule will affect eleven in-State and nine out-of-State small manufacturers who were granted a SME by the Department. In addition, the rule will affect manufacturers who have remaining inventories of AIM coatings manufactured prior to January 1, 2005 that does not comply with Part 205 VOC content limitations.

3. Regions of adverse impact: The Department does not expect there to be regions of adverse impact in the State. The VOC emission limits in Part 205 have applied state-wide since January 1, 2005, and there has been no resulting adverse impact on any particular region of the State. Of the eleven in-state manufacturers who were granted a SME, nine are located in the New York City Metropolitan Area (NYCMA). The Department, however, expects that these coatings manufacturers will be able to readily reformulate their products through the purchase of commercially available technology and that there will be no adverse impact on employment as a result of this rulemaking.

4. Minimizing adverse impact: The Department has provided advance notice of these rule revisions to the regulated community so that companies have sufficient time to take the necessary steps to come into compliance with Part 205. These steps include reformulating products and ensuring that existing inventories of non-complying products are sold prior to May 15, 2007, or moved out of the State. Compliant formulations are available for all AIM coating categories and are currently being sold throughout the State. The Department, therefore, does not anticipate any adverse impacts on employment from the adoption of these rule revisions. The Department, moreover, believes that this rule will have a positive economic impact on the AIM coatings market because all manufacturers will be operating on a level playing field. Competition will likely constrain manufacturers from passing on production costs to consumers. In sum, the Department does not expect this regulation to have an adverse effect on employment in the State.

5. Self employment opportunities: not applicable.

***Assessment of Public Comment***

Introduction

The Department received comments from two persons on the proposed revisions to Part 205. One commenter, a major manufacturer, supported the proposed rule in whole and the other commenter, a New York State retailer, opposed the "sell-through" end date provision. Although the retailer submitted more extensive comments, which require more detailed responses, the Department considers both comments equally important.

Assessment of Public Comments

The Department of Environmental Conservation (Department or DEC) published notice of the proposed rulemaking for 6 NYCRR Part 205, the AIM Coatings regulation in the State Register and the Environmental Notice Bulletin on December 6, 2006. The Department held public hearings on the proposed revisions to 6 NYCRR Part 205, on January 10, 11 and 12, 2007 in New York City, Avon, and Albany respectively to receive oral and written comments and accepted written comments until close of business January 22, 2007. The following persons provided comments on the proposed revisions to the regulations:

1. Ms. Madelyn K. Harding, The Sherwin-Williams Company

2. Mr. John Franklin, Williams Lumber & Home Centers

The following is a summary of the comments received and the Department's response to those comments. Following each comment is the number representing the corresponding commenter above. In addition, a list of references is included at the end of this assessment. The citation "reference—" in the Department's responses corresponds to the numerical reference on the list. These references are part of the public record for this rulemaking and are available for public inspection at the Department's offices at 625 Broadway, Albany, NY.

1. Comment - The Sherwin-Williams Company is pleased to provide these comments on the proposed Part 205 revisions to the Department of Environmental Conservation's Architectural and Industrial Maintenance ("AIM") Coatings regulation. Sherwin-Williams supports the revisions to the proposed revisions ending the small manufacturer exemption ("SME") program by December 31, 2006. The revisions level the playing field among manufacturers and thus ensure that all manufacturers in the industry are treated equally. Also, as pointed out by the DEC, the revisions will provide consistency across the OTR with other states that have adopted similar OTC rules and will result in additional emissions reductions. (1)

Response – The Department welcomes the comment in support of this rule making which will address the problems caused by high levels of ozone and reduce emissions of ozone precursor pollutants in the State so the State can comply with federal health-based National Ambient Air Quality Standards (NAAQS).

2. Comment ("No Warning") – The commenter asks - if the reason for this regulation was improving clean air, why were the retailers in New York not notified that a deadline would be set and given enough time to plan ahead? (2)

Response – When the Department promulgated revisions to Part 205 in 2003 (VOC content limits effective 1/1/05) it anticipated fourteen tons per day (tpd) in VOC emission reductions for its mandated air quality objectives for ozone attainment. Revised Part 205 included an exemption for small AIM coatings manufactures, otherwise known as the "SME." As a result of the seventeen SMEs granted to AIM coatings manufacturers, there was a loss of four tpd in VOC emission reductions from the original fourteen tpd that were expected. In addition, the Department learned from discussions with industry representatives that pre-2005 product was still being sold in 2006, contrary to the Department's expectations that such product would have been sold off in 2005. Because these emission reductions were vital for demonstrating ozone attainment, the Department determined that revisions to Part 205 were necessary to address these issues as soon as possible (see reference 1). The Department adopted an emergency rule on August 9, 2006 which revised Part 205 to (1) eliminate the SME and (2) establish a sell-through end date of May 15, 2007 for noncompliant products manufactured prior to January 1, 2005 or pursuant to a SME. The emergency adoption was intended to provide as much notice as possible to the regulated community of the Department's intended rule changes. The emergency rule adoption in effect provided the entire AIM coatings industry with nine months lead time in order to come into compliance with the new May 15, 2007 "sell-through" end date.

The Department believes that nine months advance notice is enough time for the AIM coatings community (manufacturers, wholesalers, distributors, and retailers etc) doing business in New York State to adopt a strategy for removing any remaining inventory of noncompliant AIM coatings by May 15, 2007. Part 205 as adopted in 2003 did not include a three year "sell-through" provision like the California Air Resources Board (CARB) suggested control measure it is mirrored after. As part of the 2003 rulemaking, the AIM coatings industry advised the Department that there was no need for a three year "sell-through" in New York because products move through the market place very or relatively quickly and would be sold off long before the three year sell-though date. At the same time of the emergency rule making the Department began a comprehensive outreach effort to contact over twenty thousand regulated entities about these regulatory changes to Part 205.

3. Comment ("What Does It Really Do For The Air?") – While the commenter considers clean air to be a good thing and supports it, he doesn't see the proposed rule changes cleaning the air. The commenter gives an example of a product in one can that is identical in formula (same VOC content) to a product in another can with the sole difference being the wording on the "new" label versus the wording on the "old," now noncompliant label. The commenter sees no benefit to air quality when either product can be used and all this does is require him to buy new paint and dispose of the perfectly good old paint come May 15, 2007. In another example, the commenter claims that if he sells off product at a reduced price that his customers will not protect the paint like he would. He claims they will let the can rust, or worse, let it freeze and then it would be wasted. The commenter also claims that the Department doesn't want him to sell it and wants him to ship it out of the state, to Pennsylvania, or to Ohio. He

states that when applied there, the prevailing winds will just blow the VOC's back into New York anyway. (2)

Response – The purpose of these revisions which are explained in detail in the Regulatory Impact Statement (see reference 1) and responses number 2 and number 5 herein, is to improve the air quality in New York State by ensuring that only compliant AIM coatings are sold in the State. Despite the commenter's claim that this proposed rule will not improve air quality, the elimination of non-complying AIM coatings products from the marketplace is expected to have a nearly immediate measurable impact on the VOC emissions from AIM coatings in New York State.

It is possible that a coating could be compliant when used as a specialty primer or on a metal surface but noncompliant if is sold as a flat or non-flat. The commenter seems concerned that this is an inappropriate distinction. The Department (along with CARB and the OTC states) has evaluated the various coatings and associated uses and determined appropriate limits based upon specific uses. This effort resulted in the establishment of 52 AIM coating categories. Since the commenter deals with many different types of AIM coatings, it seems likely that the commenter understands that different uses demand different properties of coating, and while one coating might be able to be used for many purposes, often other coatings might be more appropriate (and often less costly) for a less demanding use. If the commenter has AIM coatings that are noncompliant in the particular coating category or categories shown on the container label but could be legally sold under another category, the commenter can ask the manufacturer for a new compliant label. The comment regarding consumers wasting paint is speculative. The Department doesn't agree that a consumer would waste a can of paint just purchased. The comment also assumes that a customer would not use the paint when purchased but would store it, and would not try to recycle old paint at a community sponsored hazardous material recycling program. The commenter also states that the Department suggests that the coating should be sent to Pennsylvania or Ohio. The Department has not suggested that the coating should be sent to any specific state, but has suggested that it could be sent to a state where the AIM coating is compliant.

4. Comment ("The May 15th Sell Off Date") – The arbitrary time frame is what is not reasonable. Since finding out about the change in November, we had just completed the 2006 exterior selling season. The commenter claims that he will not be able to sell hardly any exterior product again until late April or May 2007, depending on the weather. The commenter claims that it is unreasonable to expect that he could sell all of the noncompliant VOC exterior product before May 15th, 2007. For a comparison, Virginia has allowed sell off until December 31st, 2007, Maine until December 31st, 2008, and New Hampshire allows sell off until December 31st, 2009. It appears that those who pass laws in other states have given retailers a better chance to liquidate product at a reasonable profit instead of forcing them to deal with liquidators.

Why does Virginia, with the much warmer climate, allow a longer time than New York to sell off? Virginia, being much farther south, has a significantly longer exterior season to properly liquidate the noncompliant products. If it rains a lot next April and May we will have little probability that we will be able to sell off our exterior products on time. Most of our exterior season is from June to September, not before May 15th. (2)

Response – See response to comment number 2. In addition, States are obligated under the Clean Air Act to implement measures, including pollution control requirements and emission limitations, as necessary to demonstrate attainment with the different NAAQSs for ozone. As a result states have to adopt control measures that often differ from other states in order to meet their own air quality objectives. With regard to implementing the OTC model AIM coatings rule, states for the most part have promulgated similar AIM coatings rules with some minor state-by-state exceptions. In New York's case, as explained in the RIS (see reference number 1), a May 15, 2007 "sell-through" end date is vital to New York's efforts to demonstrate attainment of the ozone NAAQS. The May 15th date is consistent with the beginning of the ozone season.

5. Comment ("Returning Product To The Manufacturer") – The commenter claims that he doesn't see manufacturers like Sherwin Williams taking back any of their product. He also states that most of the vendors contacted have made no indication that they will accept a return of old product. The commenter claims that the real culprit for clean air is transportation and that is where we should be regulating. (2)

Response – While the commenter states that manufactures will not take back any product, the commenter provides no indication that he in fact sought assistance from the manufacturers of the AIM coatings he sells to address his concerns. The commenter claims to have contacted vendors and that they are reluctant to take back noncompliant product. The Department urges the commenter to discuss this situation further with vendors and manufacturers. In the past, when noncompliant coatings have been found in a retail outlet, the Department has asked the manufacturer to recall all of the noncompliant product. The Department recommends that retailers should have discussions with the vendors and manufacturers to develop a plan for clearance of the noncompliant product, since all three entities have a stake in compliance. With regard to the comment on regulating transportation activities, it should be noted that the Department has adopted substantial programs to reduce emissions from transportation sources including the most stringent motor vehicle emissions program allowed by law.

6. Comment ("The Expense of Liquidation") – The commenter claims that he did not hear about the rule making until November 2006 when one of his field representatives informed him of the changes to Part 205. As a result there was not enough time to put a plan in the works in order to force liquidation to get rid of any noncompliant paint by May 15, 2007. Now the commenter claims that he will have to lower the price on the existing noncompliant product in order to sell it off. (2)

Response – See responses to comments number 2, number 3, number 4 and number 5. The commenter's proposed plan to sell off any remaining noncompliant product is just one of the compliance options available to the commenter. He could send this product to an incinerator and have it destroyed, send it to a liquidator, or even send it to a state where it would be compliant.

7. Comment ("Actual Identification of Product") – The commenter states that it is difficult to differentiate "new" compliant product from the "older" noncompliant versions sold under the same name. (2)

Response – See responses to comments number 2 and number 5. Also, in this case, the commenter's statements indicate that he has already developed and implemented a scheme to address this situation.

REFERENCES

Regulatory Impact Statement 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings, New York State Department of Environmental Conservation, December 6, 2006.

# Department of Health

## EMERGENCY RULE MAKING

### FQHC Psychotherapy and Offsite Services

**I.D. No.** HLT-14-07-00003-E
**Filing No.** 307
**Filing date:** March 16, 2007
**Effective date:** March 16, 2007

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

***Action taken:*** Amendment of section 86-4.9 of Title 10 NYCRR.

***Statutory authority:*** Public Health Law, section 210.1(v)

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

***Specific reasons underlying the finding of necessity:*** The amendment to 10 NYCRR 86-4.9 will permit Medicaid billing for individual psychotherapy services provided by certified social workers in Article 28 Federally Qualified Health Centers (FQHCs). In conjunction with this change, DOH is also amending regulations to prohibit Article 28 clinics from billing for group visits and to prohibit such services from being provided by part-time clinics. Based upon the Department's interpretation of 10 NYCRR 86-4.9(c), social work services have not been considered billable threshold visits in article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New Federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by Federal law. Failure to comply with these mandates could lead to federal sanctions and the loss of Federal dollars. Additionally, allowing Medicaid

reimbursement for clinical social worker services is expected to increase access to needed mental health services.

***Subject:*** Payment for FQHC psychotherapy and offsite services.

***Purpose:*** To permit psychotherapy by certified social workers as a billable service under certain circumstances.

***Text of emergency rule:*** Section 86-4.9 is amended to read as follows:

86-4.9 Units of service. (a) The unit of service used to establish rates of payment shall be the threshold visit, except for dialysis, abortion, sterilization services and free-standing ambulatory surgery, for which rates of payment shall be established for each procedure. For methadone maintenance treatment services, the rate of payment shall be established on a fixed weekly basis per recipient.

(b) A threshold visit, including all part-time clinic visits, shall occur each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit. Only one threshold visit per patient per day shall be allowable for reimbursement purposes, except for transfusion services to hemophiliacs, in which case each transfusion visit shall constitute an allowable threshold visit.

(c) Offsite services *and group services, (except in relation to Federally Qualified Health Center (FQHC) clinics, as defined in subdivision (h) of this section)*, visits related to the provision of offsite services, visits for ordered ambulatory services, and patient visits solely for the purpose of the following services shall not constitute threshold visits: pharmacy, nutrition, medical social services *with the exception of clinical social services in FQHC clinics as defined in subdivision (g) of this section*, respiratory therapy, recreation therapy. Offsite services are medical services provided by a facility's clinic staff at locations other than those operated by and under the licensure of the facility.

(d) A procedure shall include the total service, including the initial visit, preparatory visits, the actual procedure and follow-up visits related to the procedure. All visits related to a procedure, regardless of number, shall be part of one procedure and shall not be reported as a threshold visit.

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

(f) Ordered ambulatory services may be covered and reimbursed on a fee-for-service basis in accordance with the State medical fee schedule. Ordered ambulatory services are specific services provided to nonregistered clinic patients at the facility, upon the order and referral of a physician, physician's assistant, dentist or podiatrist who is not employed by or under contract with the clinic, to test, diagnose or treat the patient. Ordered ambulatory services include laboratory services, diagnostic radiology services, pharmacy services, ultrasound services, rehabilitation therapy, diagnostic services and psychological evaluation services.

*(g) For purposes of this section clinical social services are defined as individual psychotherapy services provided in a Federally Qualified Health Center, by a licensed clinical social worker or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status by the New York State Education Department.*

*(h) Clinical group psychotherapy services provided in a Federally Qualified Health Center, are defined as services performed by a clinician qualified as in subdivision (g) of this section, or by a licensed psychiatrist or psychologist to groups of patients ranging in size from two to eight patients. Clinical group psychotherapy shall not include case management services. Reimbursement for these services shall be made on the basis of a FQHC group rate which will be calculated by the Department for this specific purpose, payable for each individual up to the limits set forth herein, using elements of the Relative Based Relative Value System (RBRVS) promulgated by the Centers For Medicare And Medicaid Services (CMS), and approved by the State Division of Budget. Psychotherapy, including clinical social services and clinical group psychotherapy services, may not exceed 15 percent of a clinic's total annual threshold visits.*

*(i) Federally Qualified Health Centers will be reimbursed for the provision of offsite primary care services to existing FQHC patients in need of professional services available at the FQHC, but, due to the individual's medical condition, is unable to receive the services on the premises of the center.*

*(1) FQHC offsite services must:*

*(i) consist of services normally rendered at the FQHC site.*

*(ii) be rendered to an FQHC patient with a pre-existing relationship with the FQHC (i.e., the patient was previously registered as a patient with the FQHC) in order to allow the FQHC to render continuous care when their patient is too ill to receive on-site services, and only to patients expected to recover and return to become an on-site patient again. Off-site services may not be billed for patients whose health status is expected to permanently preclude return to on-site status.*

*(iii) be rendered only for the duration of the limiting illness, with the intent that the patient return to regular treatment as an on-site patient as soon as their medical condition allows.*

*(iv) be an individual medical service rendered to an FQHC patient by a physician, physician assistant, midwife or nurse practitioner.*

*(v) not be rendered in a nursing facility or long term care facility, to any patient expected to remain a patient in that facility or at that level of care.*

*(vi) not be billed in conjunction with any other professional fee for that service, or on the same day as a threshold visit.*

*(2) Reimbursement for these services shall be made on the basis of an FQHC offsite professional rate, which will be calculated by the Department using elements of the Relative Based Relative Value System (RBRVS) promulgated by the Centers For Medicare And Medicaid Services (CMS) and approved by the State Division of Budget.*

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 13, 2007.

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

***Regulatory Impact Statement***

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner. Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made changes to the Social Security Act affecting how prices are set for Federally Qualified Health Centers and rural health centers. Section 1902(a)(10) of the federal Social Security Act (42 USC 1396a(a)(10)) and 1905(a)(2) of the Social Security Act (42 USC 1396d(a)(2)) require the State to cover the services of Federally Qualified Health Centers. Additionally, section 1861(aa) of the Social Security Act (42 USC 1395x(aa)) defines the services that a Federally Qualified Health Center provides, including the services of a clinical social worker.

Legislative Objective:

The regulatory objective of this authority is to bring the State into compliance with Federal Law regarding payments to Federally Qualified Health Centers (FQHCs). Based on the Federal Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 we will allow payments for group psychotherapy provided by social workers and limited off-site services at special rates developed for these services. Individual psychotherapy remains allowed at the threshold visit rate.

This amendment will allow individual psychotherapy by licensed clinical social workers (LCSWs) as a billable visit in FQHCs under the following circumstances:

- Services are provided by a licensed clinical social worker or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status.
- Psychotherapy services only will be permitted, not case management and related services.

Group psychotherapy as a clinical social service will be allowed in FQHCs in accordance with the following:

- Services are provided to a group of patients by a licensed clinical social worker, or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status or a licensed psychiatrist or psychologist.
- Payment will be made on the basis of a FQHC group rate.
- Payment will only be made for services that occur in FQHCs.

Payment for individual or group psychotherapy will not be allowed for services rendered off-site.

Both individual and group psychotherapy in FQHCs is limited to a total of 15 percent of all billings.

Off-site primary care services by FQHCs will be reimbursable under the following provisions:

- Individuals given care must be existing FQHC patients who are temporarily unable to receive services on-site due to their medical condition but are expected to return to the FQHC as an on-site patient.
- Services must be rendered by a physician, physician assistant, midwife or nurse practitioner and reimbursed at the FQHC offsite professional rate.
- Services are not billable with any other professional fee for that service or on the same day as a threshold visit.

Needs and Benefits:

Recent Federal changes related to Medicaid reimbursement for FQHCs mandate that group psychotherapy services provided by a social worker and off-site primary care services be considered a billable service.

This approach will ensure access to social work services in the most underserved areas and increase consistency with the policies of other state agencies.

Costs:

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

We estimate this change will increase Medicaid costs by about 7.4 million dollars gross, annually. Of this amount, about 1.2 million dollars is attributable to allowing FQHCs to bill for limited off-site visits. 6.2 million dollars is attributable to allowing FQHCs to bill for group therapy services. These changes are being made in order to comply with Federal requirements.

| Pricing & Volume Data | | | | Cost Estimates |
|---|---|---|---|---|
| | Downstate | Upstate | Statewide Average | |
| Offsite Visits | | | | Offsite Visits |
| Subsequent Hospital Care | $62.73 | $55.19 | $58.96 | $1,117,212 |
| Psychotherapy Services | | | | Group Therapy |
| Group Psychotherapy | $34.86 | $30.81 | $32.84 | $6,222,733 |
| 2004 FQHC Visit Volume | 1,894,864 | | | |
| | | | | Total |
| Volume Increase Assumptions | | | | $7,339,945 |
| Group Therapy Increase = 10% | | | | |
| Increase 2004 FQHC Volume. | | | | |
| Off-site Visit Increase = 1% Increase | | | | |
| Over 2004 FQHC Volume | | | | |

Cost to the Department of Health:

This represents a permanent filing of regulations already in effect. There will be no additional costs to the Department.

Local Government Mandates:

This 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 amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for off-site primary care services and the services of certified social workers for both individual and group psychotherapy. In light of this federal requirement, no alternatives were considered.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective upon filing with the Secretary of State.

***Regulatory Flexibility Analysis***

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action. These changes will bring our regulations into compliance with the State Education Department's (SED) new standards for social worker licensure.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size, to provide individual psychotherapy services by certified social workers. Any FQHC, regardless of size, may participate in providing off-site primary care services as well as on-site group psychotherapy services by certified social workers, a licensed psychiatrist or psychologist.

***Rural Area Flexibility Analysis***

Types and Estimated Number of Rural Areas:

This rule will apply to all Article 28 clinic sites in New York that have been designated by the Centers for Medicare and Medicaid Services (CMS) as Federally Qualified Health Centers. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has had conversations with the National Association of Social Workers Association (NASW), UCP, and CHCANYS to discuss Medicaid reimbursement for social work services and the impact of this new rule on their constituents. These groups and associations represent social workers and clinic providers from across the State, including rural areas.

***Job Impact Statement***

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

There are almost 1000 Article 28 clinics of which approximately 58 are FQHCs, FQHC look-alikes, and rural health clinics.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic and that has been designated by the Centers for Medicare and Medicaid Services (CMS)as a Federally Qualified Health Center.

Minimizing Adverse Impact:

The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work services, based upon the Center's reasonable costs for delivering covered services.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

## NOTICE OF ADOPTION

### Conditions of Citizenship and Immigration Eligibility

**I.D. No.** HLT-01-07-00008-A
**Filing No.** 306
**Filing date:** March 16, 2007
**Effective date:** April 4, 2007

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

***Action taken:*** Amendment of section 360-3.2(j) of Title 18 NYCRR.

***Statutory authority:*** Social Services Law, section 363-a(2)

***Subject:*** Citizenship and immigration status, conditions of eligibility.

***Purpose:*** To update and bring them into compliance with the Alliessa v. Novello decision.

***Text or summary was published*** in the notice of proposed rule making, I.D. No. HLT-01-07-00008-P, Issue of January 3, 2007.

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

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

***Assessment of Public Comment***

The agency received no public comment.

# Higher Education Services Corporation

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Adjustments to Income

**I.D. No.** ESC-14-07-00002-P

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

***Proposed action:*** This is a consensus rule making to amend section 2202.3 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 653(9), 655(4) and 663(5)(c)

***Subject:*** Adjustments to income.

***Purpose:*** To implement statutory requirement providing for adjustments to income for change in circumstances in certain instances.

***Text of proposed rule:*** Section 2202.3 of Title 8 of the New York Code, Rules and Regulations is hereby amended to read as follows:

Section 2202.3 Adjustments to income.

Adjustments to the income information reported may be made upon the following criteria:

(a) An adjustment may be made to parent's income based upon the eligible attendance of a parent or other dependent child of a parent, pursuant to subdivision 5 of section 663 of the Education Law.

(b) An adjustment may be made to the income of the applicant and spouse based upon the eligible attendance of such spouse or a dependent child of the applicant, pursuant to subdivision 5 of section 663 of the Education Law.

(c) For the purposes of subdivisions (a) and (b) of this section, a dependent child shall be a child who does not satisfy the criteria of section [2202.5] *2202.4* of this Part, pertaining to the financial independence of applicants.

(d) For the purposes of subdivisions (a) and (b) of this section, eligible attendance shall be full-time matriculated attendance in a program of post-secondary study which is approved for the receipt of Federal-guaranteed student loans, State-guaranteed student loans or Federal basic educational opportunity grant program awards, except for institutions, such as military academies, where no student charges for tuition, or room and board are made.

(e) Adjustments for change in circumstance.

(1) Any change in the status of an applicant, or of any person whose income was required to be included in the computation of the applicant's general award or regents scholarship, which occurs on or after January first preceding the academic year for which the application is filed with the corporation and before the first day of any term for which the award is granted, will be considered in computing an adjustment of the applicant's award for that term, provided that the change in status was caused by such person's:

(i) death;

(ii) permanent and total physical or mental disability*;*

(iii) divorce; [or]

(iv) separation by judicial decree or pursuant to an agreement of separation which is filed with a court of competent jurisdiction*;*

*(v) catastrophic illness of the applicant; or*

*(vi) the applicant or the applicant's spouse is called to active military duty as defined pursuant to subdivision 6 of section 1 of the Military Law. The term active military duty shall be synonymous with the term "active military service" as defined in subdivision 8 of section 1 of the Military Law.*

(2) The corporation may require such documentary evidence, testimony or affidavits as it deems sufficient in granting such an adjustment of an award.

(3) Adjustments shall be computed by adjusting the reported taxable income of the person whose circumstances have changed to reflect the increase or diminution of income available to the applicant during the term for which an award is made. The amount of income of such person to be included in the computation of the applicant's award shall be any support payments to be received from the noncustodial parent for the benefit of the applicant during the balance of the calendar year, plus the result of the following calculation:

(taxable income reported for base tax year) × ((number of full months status unchanged)/ (18 months))

(4) Base tax year shall mean the tax year preceding the academic year for which an award is requested.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Cheryl B. Fisher, Associate Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: cfisher@hesc.org

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

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

***Consensus Rule Making Determination***

This statement is being submitted pursuant to paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's ("HESC") Notice of Proposed Rule Making seeking to amend section 2202.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Chapter 58 of the Laws of 2006 (PART M) amended subdivision 5 of section 663 of the Education Law. The amendment allows HESC to adjust an applicant's income for the Tuition Assistance Program ("TAP") to accurately reflect an unexpected reduction in his or her financial circumstances. This statutory amendment broadened HESC's ability to adjust income for applicants experiencing catastrophic illness or military duty. As such, an applicant's overall TAP award could be increased accordingly.

Since no person is likely to object to this rule, HESC is pursuing this consensus rulemaking as defined in section 102(11) of the State Administrative Procedure Act. The proposed consensus rule merely conforms present regulations to the new, non-discretionary statutory provisions contained in section 663 of the Education Law. In addition, the proposal makes a technical change to correct an otherwise incorrect reference contained in 8 NYCRR 2202.3.

Inasmuch as the proposed consensus rule conforms present regulations to a new, non-discretionary statutory change, and further, updates an incorrect cross reference, HESC has determined that no person is likely to object to its adoption and, therefore, this consensus rulemaking is warranted.

***Job Impact Statement***

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to amend section 2202.3 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. The proposal makes a technical change to correct an otherwise incorrect reference and implements a non-discretionary statutory provision concerning the Tuition Assistance Program (TAP).

# State Division of Human Rights

## NOTICE OF ADOPTION

### General Regulations; Election of Arbitration

**I.D. No.** HRT-03-07-00006-A
**Filing No.** 304
**Filing date:** March 14, 2007
**Effective date:** April 4, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of Part 466 and repeal of Part 467 of Title 9 NYCRR.
***Statutory authority:*** Executive Law, sections 290.3, 293.2, 295.5 and 297
***Subject:*** General regulations; election of arbitration.
***Purpose:*** To make minor changes, including updating various addresses, providing information regarding changes relative to Freedom of Information requests, and information about the division's website; and repeal an obsolete rule.
***Text or summary was published*** in the notice of proposed rule making, I.D. No. HRT-03-07-00006-P, Issue of January 17, 2007.
***Final rule as compared with last published rule:*** No changes.
***Text of rule and any required statements and analyses may be obtained from:*** Jane M. Stack, Senior Attorney, Division of Human Rights, One Fordham Plaza, Bronx, NY 10458, (718) 741-3225, e-mail: jstack@dhr.state.ny.us
***Assessment of Public Comment***
The agency received no public comment.

# Department of Labor

## ERRATUM

A Notice of Adoption, I.D. No. LAB-46-06-00001-P published in the March 21, 2007 issue of the *State Register* contained the wrong I.D. No. and Re. The correct I.D. No. is LAB-46-06-00009-A, Re: Handling of Asbestos.

## NOTICE OF ADOPTION

### Public Employee Occupational Safety and Health Standards

**I.D. No.** LAB-46-06-00001-A
**Filing No.** 312
**Filing date:** March 20, 2007
**Effective date:** April 4, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of section 800.3 of Title 12 NYCRR.
***Statutory authority:*** Labor Law, section 27-a4(a)
***Subject:*** Public employees occupational safety and health standards.
***Purpose:*** To incorporate by reference into New York State Occupational Safety and Health Standards, those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Aug. 24, 2006.
***Text or summary was published*** in the notice of proposed rule making, I.D. No. LAB-46-06-00001-P, Issue of November 15, 2006.
***Final rule as compared with last published rule:*** No changes.
***Text of rule and any required statements and analyses may be obtained from:*** Diane Wallace Wehner, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Rm. 509, Albany, NY 12240, (518) 457-4380, e-mail: diane.wehner@labor.state.ny.us
***Assessment of Public Comment***
The agency received no public comment.

# Office of Mental Health

## EMERGENCY RULE MAKING

### Medical Assistance Payment for Outpatient Programs

**I.D. No.** OMH-14-07-00011-E
**Filing No.** 310
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of Part 588 of Title 14 NYCRR.
***Statutory authority:*** Mental Hygiene Law, sections 7.09(b) and 31.04(a)
***Finding of necessity for emergency rule:*** Preservation of general welfare.
***Specific reasons underlying the finding of necessity:*** These amendments increase the Medicaid rate schedule associated with clinic treatment programs and day treatment programs serving children, equalize reimbursement fees for certain outpatient programs, and make certain other changes consistent with the enacted 2005-2006 State Budget and the enacted 2006-2007 State Budget. These changes will avoid a reduction in services that would otherwise take place.
***Subject:*** Medical assistance payment for outpatient programs.
***Purpose:*** To increase certain Medicaid rate schedules and make other changes consistent with the enacted 2005-2006 and 2006-2007 State Budgets.
***Text of emergency rule:*** Part 588 of 14 NYCRR is amended as follows:

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

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

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

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

Regular at least 30 minutes [$66.00] *$71.94*
Brief at least 15 minutes [33.00] *35.97*
Group at least 60 minutes [23.10] *25.18*
Collateral at least 30 minutes [66.00] *71.94*
Group Collateral at least 60 minutes [23.10] *25.18*
Crisis at least 30 minutes [66.00] *71.94*

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

Regular at least 30 minutes [$59.40] *$64.75*
Brief at least 15 minutes [29.70] *32.37*
Group at least 60 minutes [20.79] *22.66*
Collateral at least 30 minutes [59.40] *64.75*
Group Collateral at least 60 minutes [20.79] *22.66*
Crisis at least 30 minutes [59.40] *64.75*

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

Regular at least 30 minutes [$58.30] *$63.55*
Brief at least 15 minutes [29.15] *31.77*
Group at least 60 minutes [20.41] *22.25*

Collateral at least 30 minutes [58.30] *63.55*
Group Collateral at least 60 minutes [20.41] *22.25*
Crisis at least 30 minutes [58.30] *63.55*

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

Regular at least 30 minutes $58.30
Brief at least 15 minutes 29.15
Group at least 60 minutes 20.41
Collateral at least 30 minutes 58.30
Group Collateral at least 60 minutes 20.41
Crisis at least 30 minutes 58.30]

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

(3) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule. [Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.]

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

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

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

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

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

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

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

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

| | |
|---|---|
| Service hour 1-50 | $11.66 per service hour |
| Service hour 51-80 | $10.45 per service hour |
| Service hour beyond 80 | $ 7.70 per service hour |

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

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

Full day at least 5 hours $[70.01] *72.89*
Half day at least 3 hours [35.01] *36.45*
Brief day at least 1 hour [23.34] *24.30*
Collateral at least 30 minutes [23.34] *24.30*
Home at least 30 minutes [70.01] *72.89*
Crisis at least 30 minutes [70.01] *72.89*
Preadmission - full day at least 5 hours[70.01] *72.89*
Preadmission - half day at least 3 hours [35.01] *36.45*

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

Full day at least 5 hours $[67.68] *70.46*
Half day at least 3 hours [33.84] *35.23*
Brief day at least 1 hour [22.52] *23.45*
Collateral at least 30 minutes [22.52] *23.45*
Home at least 30 minutes [67.68] *70.46*
Crisis at least 30 minutes [67.68] *70.46*
Preadmission - full day at least 5 hours [67.68] *70.46*
Preadmission - half day at least 3 hours [33.84] *35.23*

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

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

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

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

(b) Reimbursement under the medical assistance program for regular, collateral, and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be [$21.55] *$22.15* for each service hour.

(2) For programs located in New York City, the fee shall be [$28.30] *$29.09* for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be [$23.78] *$24.45* for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be [$16.30] *$16.76* for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be [$20.21] *$20.78* for each service hour.

Subdivision (c) of section 588.13 is amended to read as follows:

(c) Reimbursement under the medical assistance program for on-site, and off-site visits for all *non-State operated* intensive psychiatric rehabilitation treatment programs, licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at [$23.22] *$23.87* for each service hour.

New subdivisions (i), (j), and (k) are added to Section 588.13 to read as follows:

*(i) Clinic treatment programs for which an operating certificate has been issued shall receive an adjustment to the fee schedules set forth in paragraph (1) of subdivision (a) of this Section if they are enrolled in a*

*continuous quality improvement initiative implemented by the Commissioner. In order to be enrolled in such continuous quality improvement initiative, the program shall execute an agreement with the Office of Mental Health under which the provider agrees to participate in such initiative, and undertake such quality improvement measures as shall be developed by the Commissioner.*

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

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

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 17, 2007.

***Text of emergency rule and any required statements and analyses may be obtained from:*** Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 474-1331, e-mail: dodell@omh.state.ny.us

***Regulatory Impact Statement***

1. Statutory Authority: Subdivision (b) of section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his 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 2005 provides increased funding appropriations in support of amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 25-29 on page 268 and lines 16-20 on page 273.)

Chapter 54 of the Laws of 2006 provides increased funding appropriations in support of further amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 44-50 on page 277 and lines 1-5 on page 278.)

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

3. Needs and Benefits: These amendments increase the medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health (OMH) consistent with the enacted 2005-2006 state budget and the enacted 2006-2007 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers, as well as improve the quality and availability of services. They will also clarify that the minimum duration of a group or group collateral visit for a school-based clinic is the shorter of 60 minutes or the duration of a scheduled class period at the school where the clinic is located. They will also equalize reimbursement fees for clinic, children's day treatment and continuing day treatment with geographic areas, as approved by the Division of the Budget.

The enacted state budget for State Fiscal Year 2005-2006 provided for an approximately $6 million annual increase for clinic treatment programs. Clinic treatment programs provide outpatient treatment designed to reduce symptoms, improve functioning and provide ongoing support to adults and children admitted to the program with a diagnosis of a designated mental illness. Medicaid reimbursement for services provided by clinic treatment programs is available based on fee schedules established in Part 588 of 14 NYCRR. This rulemaking includes a proposed increase in the Medicaid fee schedules for clinics of approximately 9%.

The enacted state budget for State Fiscal Year 2005-2006 provided for implementation of Children's Day Treatment initiatives that are budgeted to cost $200,000 per year. Children's Day Treatment programs provide treatment to individuals, up to 18 years of age, designed to stabilize children's adjustment to educational settings, to prepare children for return to educational settings, and to transition children to educational settings. Admission to Children's Day Treatment programs is based on a diagnosis of a designated mental illness, plus either an extended impairment in functioning due to emotional disturbance or a current impairment in functioning with severe symptoms. Medicaid reimbursement for services provided by Children's Day Treatment programs is available based on a fee schedule established in Part 588 of 14 NYCRR. This rulemaking includes a proposed increase in the Medicaid fee schedule for these programs of approximately 6%.

Additionally, this rulemaking adds a provision to Part 588 that the minimum duration of a group or group collateral visit at a school-based clinic treatment program shall consist of the duration of a scheduled class period at that school or 60 minutes, which ever is less. Currently the regulation provides only for a group or group collateral visit of 60 minutes minimum duration. In meeting with school-based clinic program providers, the agency learned that this caused problems when the regular school period was less than 60 minutes. Such school periods may range from 45 minutes to one hour. In order to comply with the 60 minute requirement, in some cases children had to be kept for a period greater than a normal school period, and this resulted in their being late to their next class. In other cases children had to leave class early to attend a group or group collateral session. Both of these situations caused difficulties for children, treatment staff, and teachers. By aligning the group and group collateral visit duration with regular school periods, these services can be more effectively integrated into the child's school day, are less likely to disrupt other educational activities, and will be more effective.

This rulemaking also provides authority to the Commissioner to provide an adjustment to the Medicaid fee schedules for those clinic treatment programs that choose to enroll in a Continuous Quality Improvement (CQI) enhancement to be implemented by the Commissioner. This initiative uses a proven best practices model to help providers deliver high quality services. In order to encourage broad participation, OMH will provide financial incentives to providers who undertake measurable quality improvement approaches.

Further, this rulemaking provides for an enhanced rate for clinic treatment programs, approved by OMH to provide services to children and adolescents during weekend and evening hours. This rate increase, to be known as the Children's Evening and Weekend (CEW) enrichment, will be an incentive to serve children and families at times that are more convenient to their schedules.

Finally, the enacted state budget for State Fiscal Year 2006-2007 provided for approximately $2,000,000 to equalize, within geographic areas, the reimbursement fees for clinics, children's day treatment and continuing day treatment programs licensed solely under Article 31 of the Mental Hygiene Law, as approved by the Division of the Budget and provided for an increase in intensive psychiatric rehabilitation treatment program and partial hospital program fees.

4. Costs:

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

b) Costs to State and Local government and the agency:

Costs associated with 2005-2006 enacted state budget:

Medicaid services typically involve both a state and county share in matching the federal portion. While the state share of this $24 million outpatient initiative is over $6 million, the impact on local governments is much less. This is because most of the increase is being implemented after the local share Medicaid cap is already in place. (The local share Medicaid cap was an initiative included in the enacted state budget for 2005-2006, under which the state pays for increases in the local share of Medicaid after January 1, 2006.) The 9% base increase was implemented April 1, 2005. But because Medicaid is billed on an approximate 2 month lag, only 7 months, or 7/12 of the expected increase will impact on the local share Medicaid cap in the first year. None of the 7% CQI increase was paid in calendar year 2004 nor was any of the CEW enrichment paid in calendar year 2005. Of the children's school group visits, only September and October (2 out of the 10 school months) were paid in calendar year 2005. For this reason, the expected impact on local governments will be $1.7 million each year.

Annual Costs Effective for 2005

| | Total Initiative | State Share | Local Share |
|---|---|---|---|
| Clinic Increase | 10,781,260 | 2,695,315 | 1,572,267 |
| CQI Enhancement | 8,385,344 | 2,096,336 | 0 |
| CEW Enrichment | 4,439,068 | 1,109,767 | 0 |
| School Based Group | 370,012 | 92,503 | 9,250 |
| Day Treatment Increase | 799,528 | 199,882 | 139,917 |
| TOTAL | 24,775,212 | 6,193,803 | 1,721,434 |

Costs associated with and funded from the 2006-2007 enacted state budget:

For equalizing, within geographic areas the reimbursement fees for clinics, children's day treatment and continuing day treatment effective October 1, 2006: $2,000,000 for state share of Medicaid (no local share).

For intensive psychiatric rehabilitation program fee increases effective October 1, 2006: $79,221.00 for state share of Medicaid (no local share).

For partial hospital fee increases, effective October 1, 2006: $34,365.00 (no local share).

For implementation of children's day treatment initiatives: $300,000 for state share of Medicaid (no local share).

5. Local government mandates: Other than the local share of Medicaid participation, noted in Section 4, 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:

A. Alternatives to providing increased Medicaid rates.

The application of the increased funding for certain outpatient programs consistent with the 2005-2006 enacted state budget, resulted in a statewide across the board rate increase for all clinic treatment programs, other than those operated by general hospitals, of approximately 9%. It was also determined to increase rates for Children's Day Treatment programs on a statewide basis by approximately 6%.

Selection of these rate schedule changes was determined in consultation with the New York State Division of Budget, to be consistent with the enacted state budget. The programs selected were determined most in need of rate adjustments as they do not receive the cost based rate that is used for outpatient programs operated by general hospitals. This across the board increase is a balanced and fair approach. Other rate changes and increases consistent with the 2006-2007 enacted state budget were determined, in consultation with the New York State Division of Budget, to be consistent with the enacted state budget and to be necessary and required by the statute.

B. Alternatives to adjustment of minimum duration of group or group collateral visit duration.

The change in the minimum duration from a fixed 60 minutes for the duration of a scheduled class period was selected with input from providers. The alternative of reducing the time period to some fixed duration of less than 60 minutes was considered and rejected as unresponsive to needs given that the approach to be used, i.e., match the duration of group visit to that of a scheduled class period at the school where the clinic is located, will best address the concerns of providers and the children receiving services.

C. Alternatives to the continuous quality improvement incentive.

Provision of a fiscal incentive, in the 2005-2006 enacted state budget, for those clinic programs who meet requirements for enrolling in a continuous quality improvement (CQI) initiative was selected as a best practice model that will encourage providers to deliver high quality services. The alternative of developing a continuous quality improvement program without a financial incentive was rejected as lacking incentive and less fair to those providers who choose to invest the time and effort necessary to maintain and enhance quality service and improve their service delivery. The alternative of also providing added funds to programs that do not participate in the CQI initiative was rejected as not supportive of the Office's efforts to improve program quality.

D. Alternatives to equalize reimbursement for certain outpatient programs.

Equalizing Medicaid reimbursement fees, within geographic areas, for clinic, children's day treatment and continuing day treatment programs licensed solely under Article 31 of the Mental Hygiene Law is required by the enacted 2006-2007 state budget. This will provide added resources to these programs to enable them to continue to deliver quality services. The rates involved with equalization, or "leveling up", require approval by the Division of Budget. The alternative of not providing equalization was not available since it would conflict with statute.

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 rate changes associated with the 2005-2006 enacted state budget regulatory amendments were effective upon their adoption, and were deemed to have been effective on and after April 1, 2005 consistent with the 2005-2006 enacted state budget. The adjustment of minimum duration of a group or group collateral visit and the continuous quality improvement incentive were effective on September 26, 2005.

The rate changes associated with the 2006-2007 enacted budget which provide for equalization for clinic, children's day treatment and continuing day treatment were effective upon adoption and were deemed to have been effective on and after April 1, 2006, consistent with the 2006-2007 enacted state budget. The fee increases for partial hospital programs and intensive psychiatric rehabilitation treatment programs were effective upon adoption and were deemed to have been effective on and after October 1, 2006, consistent with the 2006-2007 enacted state 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 economic impact on small businesses, or local governments. The rate increases associated with this rule are required by state statute, the enacted state budgets for state fiscal years 2005-2006 and 2006-2007.

***Rural Area Flexibility Analysis***

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

***Job Impact Statement***

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

# Niagara Falls Water Board

## NOTICE OF ADOPTION

### Adoption of a Schedule of Rates, Fees and Charges

**I.D. No.** NFW-51-06-00012-A
**Filing No.** 309
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** Amendment of sections 1950.8 and 1950.20 of Title 21 NYCRR.

***Statutory authority:*** Public Authorities Law, section 1230-j

***Subject:*** Adoption of a schedule of rates, fees and charges.

***Purpose:*** To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve convenants with bondholders.

***Text or summary was published*** in the notice of proposed rule making, I.D. No. NFW-51-06-00012-P, Issue of December 20, 2006.

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

***Text of rule and any required statements and analyses may be obtained from:*** William Bolent, Director of Administrative Services, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14303, (716) 283-9770 ext. 214, e-mail: bbolents@nfwb.org

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

# Public Service Commission

## EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Installed Reserve Margin

**I.D. No.** PSC-14-07-00001-EP
**Filing date:** March 14, 2007
**Effective date:** March 14, 2007

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

***Action taken:*** The commission adopted an installed reserve margin (IRM) of 16.5 percent for the New York control area for the capability period beginning on May 1, 2007 and ending on April 30, 2008.

***Statutory authority:*** Public Service Law, sections 4, 5, 65 and 66

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

***Specific reasons underlying the finding of necessity:*** The IRM must be established on or before March 8, 2007 to enable the NYISO to take steps necessary for the efficient operation of the New York independent system operator's installed capacity auction (ICAP) on March 29, 2007. In addition, electric load serving entities must receive timely notice of the applicable IRM and minimum installed capacity requirements for the 2007 summer capability period, so they may structure their bids efficiently and procure sufficient supply to meet forecasted demand.

***Subject:*** Commission adoption of an installed reserve margin of 16.5 percent for the New York control area for the capability period beginning on May 1, 2007 and ending on April 30, 2008.

***Purpose:*** To ensure continued safety, adequacy and reliability of New York's electric system.

***Substance of emergency/proposed rule:*** This rule will establish a minimum Installed Reserve Margin (IRM) of 16.5% for the New York Control Area for the capability year beginning May 1, 2007 and ending April 30, 2008. According to the New York Independent System Operator, Inc. (NYISO), the IRM must be established on or before March 8, 2007 to enable the NYISO to take steps necessary for the efficient operation of the NYISO's Installed Capacity Auction (ICAP) on March 29, 2006. In addition, electric load serving entities must receive timely notice of the applicable IRM and minimum installed capacity requirements for the 2007 Summer Capability Period, so they may structure their bids efficiently and procure sufficient supply to meet forecasted demand.

Delaying the establishment of an IRM would interfere with the operation of the NYISO's ICAP auction. This would interfere with the ability of the NYISO and market participants to ensure adequate supplies of electricity to meet forecasted load during the upcoming period of peak demand during the summer months. Adequate supplies of electricity are absolutely essential to protect public health and safety during hot summer months. Inadequate electric supplies during heat waves can cause outages and lead to deaths from hyperthermia. Electricity cannot be stored and must be supplied immediately to satisfy energy needs and ensure continued reliability and adequacy of the State's electric system. Therefore, circumstances necessitate that the public and interested parties be given less than the minimum period for the notice and comment provided for in subdivision one of Section 202 of the State Administrative Act, and compliance with subdivision one would be contrary to the public interest. For these reasons, the Commission is adopting this rule on an emergency basis, pursuant to SAPA section 202(6).

***This notice is intended*** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 11, 2007.

***Text of rule may be obtained from:*** Central Operations, Three Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500, e-mail: Secretary@dps.state.ny.us

***Data, views or arguments may be submitted to:*** Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500, Secretary@dps.state.ny.us

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

***Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement***
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-0088SA1)

## NOTICE OF ADOPTION

### Security Requirements for Large Volume Transportation Customers by Niagara Mohawk Power Corporation d/b/a National Grid

**I.D. No.** PSC-52-06-00016-A
**Filing date:** March 16, 2007
**Effective date:** March 16, 2007

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

***Action taken:*** The commission, on Feb. 27, 2007, approved a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (the company) requesting a limited waiver of the requirements of the uniform business practices (UBP) as set forth in the schedule for gas service—P.S.C. No. 219.

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

***Subject:*** Security requirements for large volume transportation customers served under Service Classification (S.C.) No. 11—load aggregation service.

***Purpose:*** To revise the company's S.C. No. 11 security requirements applicable to direct customers participating in the company's daily balancing program by increasing the number of days included in the balancing risk calculation from 10 to 30 days for those customers with annual usage greater than 5,000 Dth, who have been dropped by their marketer either through a voluntary or involuntary action, and that are not able to demonstrate the ability to deliver gas.

***Substance of final rule:*** The Commission adopted an order approving a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (the company) requesting a limited waiver of the Commission's Uniform Business Practices (UBP) rules, allowing the company to calculate the security requirements for certain large volume transportation customers based on a 30 day period, as set forth in its Schedule for Gas Service - P.S.C. No. 219.

***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-G-1478SA1)

## NOTICE OF ADOPTION

### Farm Wind Net Metering by Rochester Gas and Electric Corporation

**I.D. No.** PSC-07-07-00021-A
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** The commission, on March 20, 2007, adopted an order allowing Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 19.

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

***Subject:*** Farm wind net metering.

***Purpose:*** To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

***Substance of final rule:*** The Public Service Commission adopted an order approving Rochester Gas and Electric Corporation's tariff filing to incorporate the amended wind net metering law which clarified the wind net metering eligibility of farm generators.

***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-E-1524SA1)

## NOTICE OF ADOPTION

### Farm Wind Net Metering by New York State Gas and Electric Corporation

**I.D. No.** PSC-01-07-00022-A
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** The commission, on March 20, 2007, adopted an order allowing New York State Electric and Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 120.

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

***Subject:*** Farm wind net metering.

***Purpose:*** To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

***Substance of final rule:*** The Public Service Commission adopted an order approving New York State Electric and Gas Corporation's tariff filing to incorporate the amended wind net metering law which clarified the wind net metering eligibility of farm generators.

***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-E-1525SA1)

## NOTICE OF ADOPTION

### Farm Wind Net Metering by Central Hudson Gas and Electric Corporation

**I.D. No.** PSC-01-07-00023-A
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** The commission, on March 20, 2007, adopted an order allowing Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 15.

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

***Subject:*** Farm wind net metering.

***Purpose:*** To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

***Substance of final rule:*** The Public Service Commission adopted an order approving Central Hudson Gas & Electric Corporation's tariff filing to incorporate the amended wind net metering law which clarified the wind net metering eligibility of farm generators.

***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-E1530SA1)

## NOTICE OF ADOPTION

### Farm Wind Net Metering by Niagara Mohawk Power Corporation

**I.D. No.** PSC-01-02-00024-A
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** The commission, on March 20, 2007, adopted an order allowing Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 207.

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

***Subject:*** Farm wind net metering.

***Purpose:*** To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

***Substance of final rule:*** The Public Service Commission adopted an order approving Niagara Mohawk Power Corporation's tariff filing to incorporate the amended wind net metering law which clarified the wind net metering eligibility of farm generators.

***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-E-1531SA1)

## NOTICE OF ADOPTION

### Farm Wind Net Metering by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-01-07-00025-A
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** The commission, on March 20, 2007, adopted an order allowing Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 2.

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

***Subject:*** Farm wind net metering.

***Purpose:*** To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

***Substance of final rule:*** The Public Service Commission adopted an order approving Orange and Rockland Utilities, Inc.'s tariff to incorporate the amended wind net metering law which clarified the wind net metering eligibility of farm generators.

***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-E-1532SA1)

## NOTICE OF ADOPTION

### Farm Wind Net Metering by Consolidated Edison Company of New York, Inc.

**I.D. No.** PSC-01-07-00026-A
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** The commission, on March 20, 2007, adopted an order allowing Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 9.

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

***Subject:*** Farm wind net metering.

***Purpose:*** To incorporate the amended Wind Net Metering Law which clarified the wind net metering eligibility of farm generators.

***Substance of final rule:*** The Public Service Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff filing to incorporate the amended wind net metering law which clarified the wind net metering eligibility of farm generators.

***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-E-1533SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Interconnection Agreement between Taconic Telephone Corporation and Frontier Communications of America, Inc.

**I.D. No.** PSC-14-07-00005-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 approve or reject, in whole or in part, a proposal filed by Taconic Telephone Corporation and Frontier Communications of America, Inc. for approval of a mutual traffic exchange agreement executed on Oct. 30, 2006.

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

***Subject:*** Interconnection of networks for local exchange service and exchange access.

***Purpose:*** To review the terms and conditions of the negotiated agreement.

***Substance of proposed rule:*** Taconic Telephone Corporation and Frontier Communications of America, Inc. have reached a negotiated agreement whereby Taconic Telephone Corporation and Frontier Communications of America, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

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

(07-C-0234SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Interconnection Agreement between Frontier Communications of Rochester, Inc. and Cricket Communications, Inc.

**I.D. No.** PSC-14-07-00006-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 Frontier Communications of Rochester, Inc. and Cricket Communications, Inc. for approval of interconnection agreement executed on Nov. 20, 2006.

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

***Subject:*** Interconnection of networks for local exchange service and exchange access.

***Purpose:*** To review the terms and conditions of the negotiated agreement.

***Substance of proposed rule:*** Frontier Communications of Rochester, Inc. and Cricket Communications, Inc. have reached a negotiated agreement whereby Frontier Communications of Rochester, Inc. and Cricket Communications, Inc. will interconnect their networks at mutually agreed upon points of interconnections to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 20, 2007, or as extended.

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

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

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

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

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

(07-C-0260SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Charges for Municipal Undergrounding by Niagara Mohawk Power Corporation

**I.D. No.** PSC-14-07-00007-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation (Niagara Mohawk) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 207—Electricity, to become effective June 25, 2007.

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

***Subject:*** Rule 32.2—charges for municipal undergrounding.

***Purpose:*** To establish provisions regarding the relocation of facilities at the request of a municipality.

***Substance of proposed rule:*** The Commission is considering Niagara Mohawk Power Corporation's (Niagara Mohawk) request to add Rule 32.2 to establish provisions relating to the relocation of facilities where a municipality requests or requires Niagara Mohawk to underground existing overhead distribution and/or transmission facilities within its jurisdiction. The proposed filing has an effective date of June 25, 2007. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk's request.

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

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

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

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

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

(07-E-0323SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Order Issued on March 7, 2007 in Case 06-E-1232 on Submetering

**I.D. No.** PSC-14-07-00008-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 confirm its order in Case 06-E-1232 issued on March 7, 2007 on submetering due to an error in SAPA process.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 65(1), 66(1)-(5), (12) and (14)

***Subject:*** Whether the commission should confirm its order issued on March 7, 2007 in Case 06-E-1232 on submetering.

***Purpose:*** To consider confirmation of an order issued on March 7, 2007 in Case 06-E-1232 on submetering.

***Substance of proposed rule:*** The Public Service Commission is considering whether to confirm its order in Case 06-E-1232 issued on March 7, 2007 on submetering due to an error in SAPA process.

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

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

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

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

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

(06-E-1232SA2)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Exemption from Rate Setting Provisions by Beaver Dam Lake Water Corp.

**I.D. No.** PSC-14-07-00009-P

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

***Proposed action:*** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Beaver Dam Lake Water Corp. to become effective July 1, 2007 requesting, pursuant to Public Service Law (PSL), section 5(4), an exemption from the rate setting provisions of PSL, section 89-c(10).

***Statutory authority:*** Public Service Law, sections 4(1), 5(1)(f) and (4), and 89-c(1) and (10)

***Subject:*** Exemption from the rate setting provisions of PSL.

***Purpose:*** To allow Beaver Dam Lake Water Corp. to set its own rates, charges and surcharges from time to time to cover the expenses associated with the operating, maintaining and upgrading the water system.

***Substance of proposed rule:*** On March 15, 2007, Beaver Dam Lake Water Corp. (Beaver Dam or the company) filed Leaf 12 Revision 2 to its electronic initial tariff schedule, P.S.C. No. 4 - Water, to become effective July 1, 2007. The company requests, pursuant to Public Service Law (PSL) § 5(4), an exemption from the rate setting provisions of PSL § 89-c(10). Beaver Dam is owned by all of its water users and for all intents and purposes functions like a homeowners association. The company proposes that it be allowed to set it own rates, charges and surcharges from time to time to cover the expenses associated with operating, maintaining and upgrading the water system. Beaver Dam is not proposing any changes in its rates and charges at this time. Customers will have the right at any time to ask the Public Service Commission to investigate the rates and charges. Beaver Dam provides flat rate water service to 152 customers consisting of one, two and three family homes in an area known as Beaver Dam Lake in the Towns of Cornwall and New Windsor, Sullivan County. The current flat rate charge for a single family home is $340 and there is also a capital improvement surcharge of $320 per year. Beaver Dam's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the file room - Tariffs). The Commission may approve or reject, in whole or in part, or modify Beaver Dam's request.

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

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

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

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

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

(07-W-324SA1)

# Department of State

## EMERGENCY RULE MAKING

### Manufacturer's and Installer's Warranty Seals

**I.D. No.** DOS-14-07-00012-E
**Filing No.** 311
**Filing date:** March 19, 2007
**Effective date:** March 19, 2007

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

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

***Statutory authority:*** L. 2005, ch. 729 section 4; and Executive Law, section 604(5)

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

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

***Subject:*** Manufacturer's warranty seals and installer's warranty seals.

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

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

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 16, 2007.

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

***Summary of Regulatory Impact Statement***

1. STATUTORY AUTHORITY.

The statutory authority for this rule is section 4 of Chapter 729 of the Laws of 2005, which provides that the Department of State (the Department) is authorized and empowered to take such steps, including the promulgation of rules and regulations, as may be necessary for the proper implementation of Article 21-B of the Executive Law (hereinafter referred to as "Article 21-B"), and section 604(5) of the Executive Law, which provides that the Department has the power and duty to promulgate rules and regulations relating to the provisions of Article 21-B.

Article 21-B was added by Chapter 729 of the Laws of 2005, and took effect on January 1, 2006. Rules similar to this rule were adopted on an emergency basis on December 22, 2005, March 22, 2006, June 20, 2006, September 18, 2006, and December 18, 2006. Those rules have expired. This rule, which will be effective on the date of filing, implements Article 21-B.

2. LEGISLATIVE OBJECTIVES.

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

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

3. NEEDS AND BENEFITS.

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

This rule establishes qualifications and procedures for obtaining certification as a manufacturer, retailer, installer, or mechanic. These qualifications and procedures are necessary to implement the certification provisions of Article 21-B. The qualifications established by this rule include minimum experience and education requirements for retailers, installers, and mechanics; initial training requirements for installers and mechanics; and continuing education requirements for all classes of certificate holders. These provisions in this rule will benefit purchasers of manufactured homes by helping to ensure that homes will be installed in a professional manner.

This rule requires each certificate holder to file a deposit account control agreement evidencing the existence of a deposit account which is maintained with a financial institution and which is pledged to the Department, a letter of credit, or a surety bond (provided, however, that a person holding a limited certificate will not be required to file his or her own deposit account control agreement, letter of credit, or surety bond if he or she is covered by his or her employer's deposit account control agreement, letter of credit, or surety bond). These financial responsibility requirements will benefit owners of manufactured homes by providing a measure of assurance that legitimate claims relating to the delivered condition, installation, service, or construction of a manufactured home will be satisfied.

The rule establishes procedures for the resolution of disputes involving the delivered condition, installation, service or construction of manufactured homes. These procedures are necessary to implement the dispute resolution provisions of Article 21-B. These procedures will benefit manufacturers, retailers, installers, mechanics, lending entities, and manufactured home owners by permitting expeditious and cost-effective resolution of disputes.

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

4. COSTS.

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

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

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

A certified party must also file a deposit account control agreement, letter of credit, or surety bond with the Department (provided, however, that person who holds a limited certificate will not be required to file his or her own deposit account control agreement, letter of credit, or surety bond if he of she is covered by the deposit account control agreement, letter of credit, or surety bond filed by his or her employer). Based on discussions with a representative of the insurance industry, the Department estimates that the premiums to be paid for surety bonds having terms of 2 years will be between $800 and $1,200 for the $50,000 surety bond to be filed by a manufacturer, between $400 and $600 for the $25,000 surety bond to be filed by a retailer, approximately $200 for the $10,000 surety bond to be filed by an installer, and approximately $200 for the $5,000 surety bond to be filed by a mechanic. The Department estimates that the fee for obtaining a letter of credit will typically be 1% of the face amount of the letter of credit per year, subject to a minimum fee of $100 per year; this indicates that the fee for a $50,000 letter of credit will be $500 per year (or $1,000 for 2 years), the fee for a $25,000 letter of credit will be $250 per year (or $500 for 2 years), the fee for a $10,000 letter of credit will be $100 per year

(or $200 for 2 years), and the fee for a $5,000 letter of credit will be $100 per year (or $200 for 2 years).

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

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

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

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

b. Costs to the Department:

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

c. Costs to other State agencies:

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

d. Cost to local governments:

This rule does not impose any costs on local governments.

5. PAPERWORK.

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

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any duty on local governments.

7. DUPLICATION.

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

8. ALTERNATIVES.

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

9. FEDERAL STANDARDS.

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

10. COMPLIANCE SCHEDULE.

This rule can be complied with immediately. Rules substantially similar to this rule have been in effect since December 22, 2005. Previous versions of this rule established the qualifications for certification, and provided regulated parties with the information necessary to apply for and obtain the required certification prior to the date certification was first required (July 1, 2006). Previous versions of this rule also included transitional provisions, as required by section 3 of Chapter 729 of the Laws of 2005, that permitted installers and mechanics to obtain certification prior to completion of the initial training requirements that otherwise would apply. This rule continues, without substantial change, the qualifications for certification first established on December 22, 2005.

***Summary Regulatory Flexibility Analysis***

1. EFFECT OF RULE.

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

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

2. COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacture's warranty seal is not required.)

This rule requires installers to file quarterly reports with the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. The qualifications for obtaining and retaining certification include (1) the filing of a surety bond, letter of credit, or deposit account control agreement; (2) having have at least a high school education, or the equivalent; (3) satisfying specified experience requirements; (4) satisfying specified initial training requirements; (5) in the case of an installer or mechanic, passing a written examination; and (6) satisfying specified continuing education requirements. In addition, a certified manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes.

Each certified business entity must employ at least one certified person.

At least one person certified by the Department of State as an installer must be present at the home site during the installation or a manufactured home.

At least one person certified by the Department of State as a mechanic must be present at the home site during the performance of any service.

Any person or business entity owning or operating more than one manufacturing plant that manufactures, delivers, or sells manufactured homes in the State of New York shall be required to obtain a separate certification as a manufacturer for each such manufacturing plant.

Any person or business entity owning or operating more than one retail sales location in the State of New York shall be required to obtain a separate certification as a retailer for each such retail sales location.

This rule establishes requirements for approval of instructional providers.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule) and the installer's warranty seal has been attached to such manufactured home.

3. PROFESSIONAL SERVICES.

Professional services are not likely to be required to comply with the reporting, recordkeeping and other requirements of this rule.

4. COMPLIANCE COSTS.

Manufacturers will be required to pay $125 for each manufacturer's warranty seal, and will be permitted to charge up to $150 for attaching a seal to a manufacture home.

Installers will be required to pay between $25 and $35 for each installer's warranty seal, and will be permitted to charge up to $50 for attaching a seal to a manufacture home.

The initial cost of obtaining certification will include (1) the cost of obtaining the required surety bond, letter of credit, or deposit account control agreement, (2) the certification fee to be paid to the Department of State, and (3) in the case of certification as an installer or mechanic, the cost of the required initial training. The Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between $1,000 and $1,400, the initial cost of obtaining certification as a retailer will be between $600 and $800, the initial cost of obtaining certification as an installer will be between $600 and $700, and the initial cost of obtaining certification as a mechanic will be between $400 and $425.

A person applying for a limited certificate is not required to provide his or her own surety bond, letter of credit, or deposit account control agreement. In addition, the fee to be paid to the Department of State for a limited certificate is lower than the fee to be paid for a corresponding non-limited certificate. The Department of State estimates that the initial cost of obtaining limited certification as a manufacturer or retailer will be $25, the initial cost of obtaining limited certification as an installer will be between $225 and $325, and the initial cost of obtaining limited certification as a mechanic will be between $125 and $150.

The cost of maintaining certification will include (1) the cost of renewing the required surety bond, letter of credit, or deposit account control agreement, (2) the renewal fee to be paid to the Department of State, and (3) the cost of the required continuing education courses. The Department of State estimates that the cost of maintaining certification as a manufacturer will be between $1,050 and $1,450 every 2 years (or between $525 and $725 per year), the cost of maintaining certification as a retailer will be between $650 and $850 every 2 years (or between $325 and $425 per year), the cost of maintaining certification as an installer will be $450 every 2 years (or $225 per year), and the cost of maintaining certification as a mechanic will be $350 every 2 years (or $175 per year).

A person holding a limited certificate will not incur the expense of renewing his or her own surety bond, letter of credit or deposit account control agreement. In addition, the fee to be paid to the Department of State to renew a limited certificate will be less than the fee to be paid to renew a corresponding non-limited certificate. The Department of State estimates that the cost of maintaining limited certification in any category (manufacturer, retailer, installer or mechanic) will be $75 every 2 years (or $37.50 per year).

The foregoing compliance costs are not likely to vary significantly by reason of the size of the business.

Local governments are not likely to incur any costs in complying with this rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State will print the warranty seals required by this rule. The Department of State intends to prepare the application forms that will be required by this rule, and to posts such forms on the Department's web page and otherwise make such forms freely available to the regulated parties. The Department of State believes that it will be economically and technologically feasible for small businesses to comply with this rules.

6. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the size of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for small businesses than for it will be for larger businesses. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries.

The Department of State will notify code enforcement officials throughout the State and other interested parties of the adoption of this rule by means of a notice in *Building New York*, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. In addition, the Department of State will post the full text of this rule on the Department's website.

***Rural Area Flexibility Analysis***

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements Article 21-B of the Executive Law. Both Article 21-B and this rule apply uniformly throughout the State, including all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacture's warranty seal is not required.) The seals are to be requested in writing, on a form to be supplied by or otherwise acceptable to the Department of State.

This rule requires installers to file quarterly reports with the Department of State specifying, with respect to each manufactured home installed by the installer during the reporting period covered by such report, the location where such manufactured home was installed, the owner of such manufactured home at the time of installation, the type or model of such manufactured home, the manufacturer of such manufactured home; and the written certification of the installer that the installation of such manufactured home meets the standards of the New York State Uniform Fire Prevention and Building Code. The quarterly reports are to be filed on forms provided by or otherwise acceptable to the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. Applications for certification are to be in writing, on forms provided by or otherwise acceptable to the Department of State. The qualifications for obtaining and retaining certification are summarized in paragraph 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

This rule requires any private trade association or other entity wishing to provide initial training courses or continuing education courses to apply to the Department of State for approval as an instructional provider. This rule requires approved instructional providers to apply to the Department of State for approval of each course it proposes to provide. All applications are to be submitted in writing, on forms provided by or otherwise acceptable to the Department of State. Instructional providers are required to keep records showing the date and location of each course presentation and the names and addresses of each student taking the course, and to file reports showing such information with the Department of State.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal required by this rule has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule), the installer's warranty seal required by this section has been attached to such manufactured home, and the governmental agency or department or other person or entity responsible for issuing certificates of occupancy has independently determined that such manufactured home has been installed in accordance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code.

Professional services are not likely to be required in rural areas in order to comply with the reporting, recordkeeping and other compliance requirements imposed by this rule.

3. COSTS.

Manufacturers will be required to pay $125 for each manufacturer's warranty seal, and will be permitted to charge up to $150 for attaching a seal to a manufacture home.

Installers will be required to pay between $25 and $35 for each installer's warranty seal, and will be permitted to charge up to $50 for attaching a seal to a manufacture home.

The initial cost of obtaining certification will include (1) the cost of obtaining the required surety bond, letter of credit, or deposit account control agreement, (2) the certification fee to be paid to the Department of State, and (3) in the case of certification as an installer or mechanic, the

cost of the required initial training. The Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between $1,000 and $1,400, the initial cost of obtaining certification as a retailer will be between $600 and $800, the initial cost of obtaining certification as an installer will be between $600 and $700, and the initial cost of obtaining certification as a mechanic will be between $400 and $425.

A person applying for a limited certificate is not required to provide his or her own surety bond, letter of credit, or deposit account control agreement. In addition, the fee to be paid to the Department of State for a limited certificate is lower than the fee to be paid for a corresponding non-limited certificate. The Department of State estimates that the initial cost of obtaining limited certification as a manufacturer or retailer will be $25, the initial cost of obtaining limited certification as an installer will be between $225 and $325, and the initial cost of obtaining limited certification as a mechanic will be between $125 and $150.

The cost of maintaining certification will include (1) the cost of renewing the required surety bond, letter of credit, or deposit account control agreement, (2) the renewal fee to be paid to the Department of State, and (3) the cost of the required continuing education courses. The Department of State estimates that the cost of maintaining certification as a manufacturer will be between $1,050 and $1,450 every 2 years (or between $525 and $725 per year), the cost of maintaining certification as a retailer will be between $650 and $850 every 2 years (or between $325 and $425 per year), the cost of maintaining certification as an installer will be $450 every 2 years (or $225 per year), and the cost of maintaining certification as a mechanic will be $350 every 2 years (or $175 per year).

A person holding a limited certificate will not incur the expense of renewing his or her own surety bond, letter of credit or deposit account control agreement. In addition, the fee to be paid to the Department of State to renew a limited certificate will be less than the fee to be paid to renew a corresponding non-limited certificate. The Department of State estimates that the cost of maintaining limited certification in any category (manufacturer, retailer, installer or mechanic) will be $75 every 2 years (or $37.50 per year).

Such costs are not likely to vary significantly for different types of public and private entities in rural areas. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay $35 per seal, or $10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the fee for a letter of credit or premium for a surety bond may be dependent, in part, on the location of the business for which the letter of credit or surety bond is issued.

4. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the location of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for regulated parties located in rural areas than for it will be for regulated parties located in suburban or metropolitan areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries, including representatives of those industries located in rural areas.

The Department of State will notify code enforcement officials throughout the State, including those in rural areas, and other interested parties of the adoption of this rule by means of a notice in *Building New York*, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. In addition, the Department of State will post the full text of this rule on the Department's website.

***Job Impact Statement***

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule establishes the procedures for obtaining and attaching the manufacturer's warranty seal and installer's warranty seal required by Article 21-B of the Executive Law, the fees to be paid by the manufacturer and installer to obtain the warranty seals, and the maximum fees that may be charged to the customer for attaching the warranty seals to the manufactured home. The maximum fee that may be charged to a customer for attaching the required seals will be $200. The typical delivered and installed cost of a manufactured home in this State is approximately $70,000. Therefore, the cost of the warranty seals will be less than 0.3% of the cost of a home, and the statutory requirement that warranty seals be attached, as implemented by this rule, should not have a substantial impact on the market for manufactured homes or on jobs or employment opportunities in the manufactured home industry.

This rule also establishes procedures for determination of certain disputes regarding manufactured homes by the Department of State. Article 21-B directs the Department of State to establish such procedures. It is anticipated that by providing for administrative determination of disputes, this rule will reduce the litigation expenses for all parties involved in such disputes. Therefore, the statutory requirement that the Department of State provided for administrative resolution of disputes, as implemented by this rule, should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

This rule also established the qualifications for obtaining certification as a manufacturer, retailer, installer, or mechanic of manufactured homes. A person or business entity applying for certification will incur the following costs:

(1) Generally, the cost of obtaining a certification will be $100 per year in the case of a manufacturer, retailer, and installer, and $50 per year in the case of a mechanic. However, a person who is employed by a person who or a business entity which is certified may apply for a limited certification, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer; the cost of obtaining such a limited certificate will be $12.50 per year.

(2) Installers and mechanics may be required to pay fees to the instructional providers who present the initial training courses required for certification, and all certificate holders may be required to pay fees to the instructional providers who present the continuing education courses required to maintain certified status.

(3) Generally, each certificate holder will be required to file a deposit account control agreement, letter of credit, or surety bond. Those certificate holders who file a letter of credit will be required to pay fees to the financial institutions that issue such letters of credit, and those certificate holders who file a surety bond will be required to pay premiums to the insurance companies that issue such bonds. However, the holder of a limited certificate will not be required to file a deposit account control agreement, letter of credit, or surety bond, provided that his or her certified employer has filed an acceptable deposit account control agreement, letter of credit, or surety bond.

It is anticipated that the total cost of certification, instruction, and bonding will be relatively modest, particularly when these costs are spread over all the units manufactured by a certified manufacturer, sold by a certified retailer, installed by a certified installer, or serviced by a certified mechanic, during the course of a year. Therefore, the statutorily mandated certification process, as implemented by this rule, should not add a significant sum to the total cost of a manufactured home in this State, and should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

# State University of New York

## NOTICE OF ADOPTION

### Contracting and Purchasing Materials, Services and Construction

**I.D. No.** SUN-04-07-00007-A
**Filing No.** 313
**Filing date:** March 20, 2007
**Effective date:** April 4, 2007

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

***Action taken:*** Amendment of section 316.4(b) and (e) of Title 8 NYCRR.

***Statutory authority:*** Education Law, section 355(2)(b) and (h)

***Subject:*** Contracting and purchasing materials, supplies, equipment, services and construction.

***Purpose:*** To implement the results of negotiations between the State University and the Office of the State Comptroller.

***Text or summary was published*** in the notice of proposed rule making, I.D. No. SUN-04-07-00007-P, Issue of January 24, 2007.

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

***Text of rule and any required statements and analyses may be obtained from:*** Rose Marie Scrodanus, Associate Counsel, State University of New York, System Administration, University Plaza, S-315, Albany, NY 12246, (518) 443-5400, e-mail: rosemarie. scrodanus@suny.edu

***Assessment of Public Comment***

The agency received no public comment.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Freedom of Information Law

**I.D. No.** SUN-14-07-00013-P

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

***Proposed action:*** This is a consensus rule making to amend Part 311 of Title 8 NYCRR.

***Statutory authority:*** Education Law, section 355(2)(b)

***Subject:*** Freedom of Information Law (FOIL).

***Purpose:*** To bring NYCRR into compliance with article 6 of Public Officers Law (Freedom of Information Law).

***Text of proposed rule:*** § 311.1 Designation of records access officer.

(a) The chancellor for the central administration of the university and the chief administrative officer of each State-operated institution are responsible for insuring compliance with the regulations herein. For the purposes of central administration of the university, the *Vice Chancellor and Secretary of the University* [Executive Director, Central Administration Services], or designee, State University Plaza, Albany, NY 12246, *FOIL@suny.edu*, shall serve as records access officer. A records access officer shall be designated by the chief administrative officer of each campus. *For State-operated institutions, the* [The] name, title, [and] business address *and email address* of the records access officer may be obtained from the office of the chief administrative officer of each campus.

* * *

§ 311.4 Requests for public access to records.

(d) *Within five business days of the receipt of a written request for a record reasonably described, the records access officer shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied. If the records access officer determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the records access officer shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.* [If the records access officer does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within 10 business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed.]

*(e) The records access officer shall accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, provided that the written requests do not seek a response in some other form.*

*(f) Failure by the records access officer to comply with the time limitations described herein shall constitute a denial of access.*

* * *

***Text of proposed rule and any required statements and analyses may be obtained from:*** Wendy Kowalczyk, Associate Counsel, State University of New York, University Plaza, S-313, Albany, NY, (518) 443-5400, e-mail: wendy.kowalczyk@suny.edu

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

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

***Consensus Rule Making Determination***

This rulemaking change will not be of interest to any public or private entity because the majority of proposed changes conform to non-discretionary statutory provisions and bring Part 311 of 8 NYCRR (Public Access to Records of State University of New York) into compliance with Article 6 of Public Officers Law (Freedom of Information Law). One change, identification of the records access officer, is technical and non-controversial.

***Job Impact Statement***

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses bringing Part 311 of 8 NYCRR (Public Access to Records of State University of New York) into compliance with Article 6 of Public Officers Law (Freedom of Information Law).

# Workers' Compensation Board

## EMERGENCY RULE MAKING

### Independent Medical Examinations

**I.D. No.** WCB-14-07-00010-E
**Filing No.** 308
**Filing date:** March 20, 2007
**Effective date:** March 20, 2007

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

***Action taken:*** Amendment of section 300.2(d)(11) of Title 12 NYCRR.

***Statutory authority:*** Workers' Compensation Law, sections 117 and 137

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

***Specific reasons underlying the finding of necessity:*** Recent decisions issued by Board Panels have interpreted the current regulation as requiring reports of independent medical examinations (IMEs) be received by the board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the board is not open on legal holidays, Saturdays and Sundays, and that U.S. Post Offices are not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is precluded and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, workers' compensation insurance carrier/self-insured employer, claimant's treating provider and representative, and the claimant it is not possible to send the report by facsimile or electronic means. The recent decisions have greatly, negatively impact the professionals who conduct IMEs, the IME entities, insurance carriers and self-insured employers. When untimely reports are precluded, the insurance carriers and self-insured employers are prevented from adequately defending their position. Accordingly, emergency adoption of this rule is necessary.

***Subject:*** Filing written reports of independent medical examinations (IMEs)

***Purpose:*** To amend the time for filing written reports of IMEs with the board and furnished to all others.

***Text of emergency rule:*** Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 7, 2007.

***Text of emergency rule and any required statements and analyses may be obtained from:*** Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 486-9564, e-mail: officeofgeneralcounsel@wcb.state.ny.us

***Regulatory Impact Statement***

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

***Regulatory Flexibility Analysis***

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

***Job Impact Statement***

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.