

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.

Banking Department

NOTICE OF ADOPTION

Community Reinvestment Act Requirements

I.D. No. BNK-39-06-00002-A
Filing No. 1570
Filing date: Dec. 20, 2006
Effective date: Jan. 10, 2007

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

Action taken: Amendment of Part 76 of Title 3 NYCRR.
Statutory authority: Banking Law, sections 10, 14(1) and 28-b(1), (3), (4) and (5)

Subject: Compliance with Community Reinvestment Act requirements.
Purpose: To remain consistent with the regulations of the Federal bank regulatory agencies under the Community Reinvestment Act.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-39-06-00002-P, Issue of September 27, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Overdraft Protection Fee Disclosure

I.D. No. BNK-39-06-00003-A
Filing No. 1571
Filing date: Dec. 20, 2006
Effective date: Jan. 10, 2007

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

Action taken: Amendment of section 6.8 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14-g and 14-h

Subject: Overdraft protection fee disclosure.

Purpose: To require a separate clear and conspicuous notice to an account holder if the account is or will be subject to newly permitted overdraft protection fees.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-39-06-00003-P, Issue of September 27, 2006.

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

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

Assessment of Public Comment

One comment was received from an Albany area resident who commented generally upon bounce protection programs' impact as being pro-bank and anti-consumer. Since the proposed rule was not specifically addressed and the rule in fact is intended to inform consumers of the particulars of such programs, no change from the proposal has been made.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-07-00003-P

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

Proposed action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "State Emergency Management Office," by decreasing the number of positions of Communications Technician 1 from 4 to 3.

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

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

Consolidated Regulatory Impact Statement

1. Statutory authority: The New York State Civil Service Commission is authorized to promulgate rules for the jurisdictional classification of offices within the classified service of the State by Section 6 of the Civil Service Law. In so doing, it is guided by the requirements of Sections 41, 42 and 43 of this same law.

2. Legislative objectives: These rule changes are in accord with the statutory authority delegated to the Civil Service Commission to prescribe rules for the jurisdictional classification of the offices and positions in the classified service of the State.

3. Needs and benefits: Article V, Section 6, of the New York State Constitution requires that, wherever practicable, appointments and promotions in the civil service of the State, including all its civil divisions, are to be made according to merit and fitness. It also requires that competitive examinations be used, as far as practicable, as a basis for establishing this eligibility. This requirement is intended to provide protection for those individuals appointed or seeking appointment to civil service positions while, at the same time, protecting the public by securing for it the services of employees with greater merit and ability. However, as the language suggests, the framers of the Constitution realized it would not always be possible, nor indeed feasible, to fill every position through the competitive process. This point was also recognized by the Legislature for, when it enacted the Civil Service Law to implement this constitutional mandate, it provided basic guidelines for determining which positions were to be outside of the competitive class. These guidelines are contained in Section 41, which provides for the exempt class; 42, the non-competitive class and 43, the labor class. Thus, there are four jurisdictional classes within the classified service of the civil service and any movement between them is termed a jurisdictional reclassification.

The Legislature further established a Civil Service Department to administer this Law and a Civil Service Commission to serve primarily as an appellant body. The Commission has also been given rule making responsibility in such areas as the jurisdictional classification of offices within the classified service of the State (Civil Service Law Section 6). In exercising this rule making responsibility, the Commission has chosen to provide appendices to its rules, known as Rules for the Classified Service, to list those positions in the classified service which are in the exempt class (Appendix 1), non-competitive class (Appendix 2), and labor class (Appendix 3).

In effect, all positions, upon creation at least, are, by constitutional mandate, a part of the competitive class and remain so until removed by the Civil Service Commission, through an amendment of its rules upon showing of impracticability in accordance with the guidelines provided by the Legislature. The guidelines are as follows. The exempt class is to include those positions specifically placed there by the Legislature, together with all other subordinate positions for which there is no requirement that the person appointed pass a civil service examination. Instead, appointments rest in the discretion of the person who, by law, has determined the position's qualifications and whether the persons to be appointed possess those qualifications. The non-competitive class is to be comprised of those positions which are not in the exempt or labor classes and for which the Civil Service Commission has found it impracticable to determine an applicant's merit and fitness through a competitive examination. The qualifications of those candidates selected are to be determined by an examination which is sufficient to insure selection of proper and competent employees. The labor class is to be made up of all unskilled laborers in the service of the State and its civil divisions, except those which can be examined for competitively.

4. Costs: The removal of a position from one jurisdictional class and placement in another is descriptive of the proper placement of the position in question in the classified service, and has no appreciable economic impact for the State or local governments.

5. Local government mandates: These amendments have no impact on local governments. They pertain only to the jurisdictional classification of positions in the State service.

6. Paperwork: There are no new reporting requirements imposed on applicants by these rules.

7. Duplication: These rules are not duplicative of State or Federal requirements.

8. Alternatives: Within the statutory constraints of the New York State Civil Service Commission, it is not believed there is a viable alternative to the jurisdictional classification chosen.

9. Federal standards: There are no parallel Federal standards and, therefore, this is not applicable.

10. Compliance schedule: No action is required by the subject State agencies and, therefore, no estimated time period is required.

Consolidated Regulatory Flexibility Analysis

The proposal does not affect or impact upon small businesses or local governments, as defined by Section 102(8) of the State Administrative Procedure Act, and, therefore, a regulatory flexibility analysis for small businesses is not required by Section 202-b of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on small businesses or local governments.

Consolidated Rural Area Flexibility Analysis

The proposal does not affect or impact upon rural areas as defined by Section 102(13) of the State Administrative Procedure Act and Section 481(7) of the Executive Law, and, therefore, a rural area flexibility analysis is not required by Section 202-bb of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on rural areas.

Consolidated Job Impact Statement

The proposal has no impact on jobs and employment opportunities. This proposal only affects the jurisdictional classification of positions in the Classified Civil Service.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CV5-02-07-00004-P

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

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by deleting therefrom the position of Director Office Audit and Quality Control, by decreasing the number of positions of Health Program Director 3 from 13 to 12 and under the subheading "Office of the Medicaid Inspector General," by adding thereto the positions of Director Office Audit and Quality Control and Health Program Director 3; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by decreasing the number of positions of Medicaid Investigator 1 from 6 to 2 and Medicaid Investigator 2 from 11 to 4, by deleting therefrom the positions of Medicaid Investigator 3 (4) and Medicaid Investigator 4 (1) and by adding thereto the subheading "Office of the Medicaid Inspector General," and the positions of Dental Services Review Assistant 1, Dental Services Review Assistant 2, Health Program Director 2, Medicaid Investigator 1 (4), Medicaid Investigator 2 (7), Medicaid Investigator 3 (4), Medicaid Investigator 4 (1), Public Health Dentist (LMAP), Public Health Physician 2 (Various Specialties) and Regional Public Health Dentist.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Security Guard Training

I.D. No. CJS-44-06-00001-A
Filing No. 1581
Filing date: Dec. 22, 2006
Effective date: Jan. 10, 2007

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

Action taken: Amendment of section 6027.4(a) of Title 9 NYCRR.

Statutory authority: Executive Law, section 847-c(1)

Subject: Security guard training.

Purpose: To revise the topics and hours of instruction for the security guard 16-hour on-the-job training course.

Text or summary was published in the notice of proposed rule making, I.D. No. CJS-44-06-00001-P, Issue of November 1, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

**EMERGENCY
 RULE MAKING**

Payment for FQHC Psychotherapy and Offsite Services

I.D. No. HLT-02-07-00001-E
Filing No. 1573
Filing date: Dec. 20, 2006
Effective date: Dec. 20, 2006

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 201.1(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 March 19, 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	Downstate			Upstate	Statewide Average	Cost Estimates
	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
						\$7,339,945
Volume Increase Assumptions						
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.

Insurance Department

**EMERGENCY
RULE MAKING**

Rules Governing Valuation of Life Insurance Reserves

I.D. No. INS-32-06-00004-E

Filing No. 1572

Filing date: Dec. 20, 2006

Effective date: Dec. 20, 2006

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

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

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

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

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

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the December 31, 2006 annual statement is March 1, 2007. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

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

Subject: Rules governing valuation of life insurance reserves.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. INS-32-06-00004-EP, Issue of August 9, 2006. The emergency rule will expire February 17, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

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

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

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

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

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this paragraph.

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

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

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of

interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

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

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

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

2. Legislative objectives:

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

3. Needs and benefits:

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

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

4. Costs:

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

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

and surplus greater than 16% as of December 31, 2004. Notwithstanding these reserve increases, holding reserves at appropriate levels is mandated by statute and will help guarantee that insurers will be able to pay future claims.

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

5. Local government mandates:

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

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

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

Another alternative was to include updated Actuarial Guideline 38 wording adopted at the September 2006 NAIC meeting. The Department decided not to include such wording.

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

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

9. Federal standards:

There are no federal standards in this subject area.

10. Compliance schedule:

This regulation applies to financial statements filed on or after December 31, 2004. The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Since this regulation has been adopted on an emergency basis since December 29, 2004, insurers have had ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

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

business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

3. Costs:

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

All insurers were in compliance with Regulation No. 147 as of December 31, 2004. Therefore, actual realized reserve impact will be close to zero. Regarding costs in terms of reserve impact, for insurers following the intent of the Law and Regulation No. 147, there will be no reserve impact. A survey conducted by the Department showed that the reserve impact, for insurers not previously in compliance with Regulation No. 147, ranged from zero for many insurers to \$50 million to nearly \$200 million for a few insurers as of December 31, 2004. For no insurer was the reserve impact as a percentage of capital and surplus greater than 16% as of December 31, 2004.

4. Minimizing adverse impact:

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

5. Rural area participation:

The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Insurers that may be impacted by this standard are aware of the issues and should have already formed an estimate of the impact. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the June 28, 2006 issue of the State Register.

Job Impact Statement

Nature of Impact:

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

Categories and number affected:

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

Regions of adverse impact:

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

Minimizing adverse impact:

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

Self-employment opportunities:

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

Assessment of Public Comment

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

NOTICE OF ADOPTION

Rules Governing Valuation of Life Insurance Reserves

I.D. No. INS-32-06-00004-A

Filing No. 1580

Filing date: Dec. 21, 2006

Effective date: Jan. 10, 2007

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

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

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

Subject: Rules governing valuation of life insurance reserves.

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

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. INS-32-06-00004-EP, Issue of August 9, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

One commentator noted that sections 98.9(c)(2)(viii)(b) and 98.9(c)(2)(viii)(e) should be changed to reflect lapse rate provisions for universal life insurance with secondary guarantees, which were recently adopted by the NAIC in September 2006. The Department decided not to include such provisions.

One commentator recommended removing portions of the amendment that applied to business prior to July 1, 2005. No specific sections were referenced by the commentator. The Department reviewed the requirements of sections 98.9(c)(2)(viii)(d)(1) and 98.9(c)(2)(viii)(h)(1) and determined that no changes were necessary.

NOTICE OF ADOPTION

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-43-06-00002-A

Filing No. 1583

Filing date: Dec. 22, 2006

Effective date: Jan. 10, 2007

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

Action taken: Amendment of Part 83 (Regulation 172) of Title 11 NYCRR.

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

Subject: Financial statement filings and accounting practices and procedures.

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

Text of final rule: Subdivision (c) of section 83.2 of Part 83 is amended to read as follows:

(c) To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2004*]2005* ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). *The Accounting Manual shall be used in the preparation of Quarterly Statements and the Annual Statement for 2005, which will be filed in 2006.*

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

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

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

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

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

In accordance with Section 4310(l) of the Insurance Law, in determining the financial condition of Article 43 corporations and not-for-profit Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Service Plans and Comprehensive HIV Special Needs Plans authorized pursuant to Article 44 of the Public Health Law, real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, may be valued by the corporation at either its current amortized book value or at ninety percent of its current market value, less encumbrances. Market value shall be determined by an independent appraisal undertaken annually, no earlier than September 30 of each year, by a member of the Appraisal Institute, 55 West Van Buren Street, Suite 1000, Chicago IL 60607. (website address is <http://appraisalinstitute.org>.) This option is not applicable to for-profit corporations authorized pursuant to Article 44 of the Public Health Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in section 83.2(c).

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

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

Although nonsubstantive changes were made to the text of the rule it did not necessitate revision to the previously published Regulatory Impact

Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Legal Services Insurance

I.D. No. INS-43-06-00004-A

Filing No. 1579

Filing date: Dec. 21, 2006

Effective date: Jan. 10, 2007

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

Action taken: Amendment of Part 262 (Regulation 162) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1113(a)(29), 1116 and arts. 23 and 63

Subject: Legal services insurance.

Purpose: To permit legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations and Article 63 of the Insurance Law, and the policy is written on such basis.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-43-06-00004-P, Issue of October 25, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Environmental Remediation Insurance Tax Credit

I.D. No. INS-44-06-00009-A

Filing No. 1586

Filing date: Dec. 26, 2006

Effective date: Jan. 10, 2007

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

Action taken: Amendment of Part 75 (Regulation 181) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2105, 2118 and 3447; and Tax Law, section 23

Subject: Standards for insurance which qualifies for the environmental remediation insurance tax credit.

Purpose: To set for the requirements relating to policies of insurance which qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law. The insurance tax credit applies to taxable years beginning on or after April 1, 2005.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-44-06-00009-P, Issue of November 1, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Criminal History Record Checks

I.D. No. MRD-52-06-00010-E

Filing No. 1574

Filing date: Dec. 20, 2006

Effective date: Dec. 20, 2006

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

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

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

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

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

Subject: Requirements related to criminal history record checks.

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

Substance of emergency rule:

- Effective December 20, 2006. Replaces similar emergency regulations that were effective April 1, June 30, September 28, December 27, 2005, March 27, June 23, and September 21, 2006.
- The following changes were made compared to the September 21 emergency regulations:
 - Removed the requirement that the voluntary agency/registered provider has to notify OMRDD directly of the action taken when a pending denial or abeyance is received. The need for the voluntary agency/registered provider to take immediate action continues. OMR Form 104, Subject Party Change in Status, will still need to be submitted to OMRDD if the voluntary agency/registered provider is not going to hire the person or have them work in a contact position.
 - Removed the requirement that registered providers must give a copy of their annual statement to each relevant DDSO, voluntary agency and entity which contracts with the registered provider on behalf of the voluntary agency.
 - Removed provisions related to expedited requests. Expedited requests are no longer available unless a subject party is also subject to another criminal history record check from the New York State Office of Mental Health (OMH) at the same time because of other responsibilities of the potential employment with the same agency or provider of services. In this case, the individual need only to be fingerprinted through one of the agencies; however OMH and OMRDD will make separate determinations.

- Modification of the requirement for agencies and providers of services to have policies and procedures to monitor registered providers. At a minimum, agencies or providers of services must have policies and procedures to verify that their contractor has attained registered provider status initially and, on at least a quarterly basis, that the contractor maintains registered provider status.
- Applies to all providers, including residences (ICFs, IRAs, and CRs), family care homes, day programs (day treatment, day habilitation, day training, sheltered workshops, prevocational services), HCBS waiver services, Article 16 clinics, family support services, and individualized support services.
- Applies to some entities that have a contract with OMRDD.
- Establishes a requirement that providers of services apply to become "registered providers" if they contract with a voluntary agency, entity on behalf of the voluntary agency or DDSO and provide transportation services or staff.
- Requires agencies to appoint an "authorized party" to request criminal history record checks and receive the results.
- Requires that prospective employees, volunteers, and operators that have "regular and substantial unsupervised or unrestricted physical contact" with people receiving services consent to a criminal history record check.
- Requires that agencies ask applicants about pending criminal charges, in addition to convictions.
- Defines employees of the provider that are subject to a criminal history record check to include people that are directly employed by the provider and other people providing similar services for the provider who are employed by other entities, such as temporary employment agencies or contractors.
- Includes a list of jobs that are presumed to include this type of contact.
- Provides that while the results of criminal history record checks are pending, employees and volunteers may not have unsupervised physical contact with people receiving services. Regulations specify restrictions placed on "temporarily approved provisional" employees and volunteers.
- Provides that oversight of temporarily approved provisional employees and volunteers can be provided by an employee who has completed required training in incidents and abuse, and who was not subject to a criminal history record check or whose criminal history record check has been completed.
- Provides that temporarily approved provisional employees and volunteers may not be assigned personal care activities which require privacy unless the employee providing oversight is in the same room.
- Provides that temporarily approved provisional employees and volunteers may not work the night shift in a residence.
- Requires that requests for criminal history record checks be made through OMRDD. If a subject party is also subject to another criminal history record check from the New York State Office of Mental Health (OMH) at the same time because of other responsibilities of the potential employment with the same agency or provider of services. In that case, the individual need only to be fingerprinted through one of the agencies; however OMH and OMRDD will make separate determinations.
- Provides that OMRDD will make a determination in each case either to issue a denial (or direct the provider to issue a denial) or not to issue a denial (or not direct the provider to issue a denial). The determination process is put on hold for pending felony charges and may be put on hold for misdemeanor charges.
- Establishes standards for OMRDD determinations that replicate the standards in the statute, with certain specified crimes that are presumptive disqualifying crimes. A new section 633.98 lists these crimes.
- Provides that OMRDD will send a summary of the criminal history record information to agencies, which can assist in further decision-making by the agency (such as evaluating whether the applicant provided false information about convictions or pending charges). Registered providers will not receive the summary unless OMRDD is issuing a denial.
- Provides that once a person has had a criminal history record check, OMRDD will let the provider know about future arrests. When they are notified, providers must take appropriate steps to protect people receiving services.

- Requires that providers notify OMRDD when employees and volunteers separate from service, so that OMRDD can remove the name from its database.
- Includes a requirement that agencies and providers of services submit an annual criminal history record check statement to OMRDD.
- Identifies actions that OMRDD may take for non-compliance.
- Makes minor changes in current requirements to assess applicant backgrounds.

Family care homes.

- Includes family care respite providers, and adults living in homes where respite is provided.
- Requires prospective family care providers and people who are to reside in a family care home and who are age 18 years and older to consent to a criminal history record check (except for individuals receiving family care services).
- Requires current family care providers and residents of a family care home to consent to a criminal history record check, at the time of recertification.
- Establishes that checks related to family care homes are requested by the sponsoring agency (DDSOs for most family care homes) and information is received by the sponsoring agency.
- Requires criminal history record checks for current residents at the time of their 18th birthday.
- Requires that a criminal history record check be conducted prior to or shortly after a new adult moves into the family care home. Additional processes are specified to safeguard people receiving services before the results of the criminal history record check are received.
- Requires notifications to OMRDD about residency and provider status so that names can be removed from the OMRDD database.
- Requires additional notifications by family care providers about changes in residents of the family care home and arrests of household members.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. MRD-52-06-00010-P, Issue of December 27, 2006. The emergency rule will expire February 17, 2007.

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

1. Statutory authority:

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

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

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

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

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

3. Needs and benefits: The new law and these implementing regulations require fingerprinting and criminal history record checks, which include information from the New York State Division of Criminal Justice Services (DCJS) for prospective employees and volunteers, family care providers and adults who are to reside in a family care home.

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

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

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

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

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

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD estimates that the new requirements will result in approximately 50,000 requests for a criminal history record check on an annual basis. The total annual cost is estimated to be approximately \$6,085,000. This cost includes the costs of the processing fee charged by the Division of Criminal Justice Services, which is \$75 per check, and the related costs, including administrative costs, which are incurred by OMRDD.

OMRDD estimates that approximately 79 percent of the annual aggregate cost will be eligible for Medicaid funding. Therefore, approximately \$4,807,150 of the total costs will be subject to a 50 percent Federal share, and approximately \$1,277,850 will be borne entirely by the State. The new requirements will therefore result in the expenditure of approximately \$2,403,575 in Federal funds, and approximately \$3,681,425 in costs to the State.

OMRDD anticipates adopting proposed regulations which will include a request for a criminal history record check from the Federal Bureau of Investigation pursuant to Chapter 673 of the Laws of 2006, effective March 12, 2007. This will change the above noted costs.

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

b. Costs to private regulated parties: There are no initial capital investment costs or initial non-capital expenses. The new requirements will not generally result in any costs to private regulated parties.

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

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

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

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

6. Paperwork: Chapter 575 of the Laws of 2004 requires two forms to be developed for use in the process of requesting criminal history record information. The forms are an informed consent form to be completed by the subject party and the request form to be completed by the authorized

party designated by the provider. Temporarily approved employees and volunteers are required to complete an attestation regarding incidents/abuse. Adults who are to reside in a family care home must provide an attestation regarding convictions and pending charges. In addition, other forms will be required by OMRDD, such as a form to designate an authorized party, forms to be completed when someone who has had a criminal history record check is no longer subject to the check, and an annual statement completed by the chief executive officer.

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

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

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

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

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

8. Alternatives: OMRDD had considered standards requiring that the oversight provided for temporarily approved provisional employees and volunteers could only be provided by a supervisor or someone with one year's experience. However, OMRDD determined that this requirement might be difficult for some providers to implement and would not enhance consumer safety.

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

10. Compliance schedule: OMRDD filed a similar emergency regulation on April 1, 2005 to implement Chapter 575 of the Laws of 2004, which became effective on April 1, 2005. Subsequent emergency regulations were filed June 30, 2005, September 28, 2005, December 27, 2005, March 27, 2006, June 23, 2006 and September 21, 2006.

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

Regulatory Flexibility Analysis

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

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

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small

business providers due to increased costs for additional services or increased compliance requirements.

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

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

4. Compliance costs:

There are no costs to local governments.

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

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

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

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

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

7. Small business and local government participation: OMRDD convened a Criminal Background Check Advisory Group which included consumer representatives, family members, and provider representatives. The group met on Nov. 8, 2004 and on March 22, 2005. In addition, the OMRDD Criminal Background Check Regulations Workgroup included provider representatives, and met on four occasions beginning in December, 2004. Presentations were made to various affected groups including the Family Care Advisory Council and the Family Support Services Advisory Council. A series of informational mailings were sent to affected providers beginning in January, 2005. OMRDD also held a series of twelve Executive Overview sessions in February and March in various locations from Buffalo to Long Island and also presented six video conferences to locations throughout the State. A series of training sessions was conducted in September, 2005 related to contractors. OMRDD has also posted relevant information on its website at www.omr.state.ny.us.

OMRDD distributed similar emergency regulations in April, June, September and December of 2005, March, June and September of 2006. OMRDD also posted the regulations on the Agency website. No comments were received regarding the emergency regulations.

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Public Service Commission

NOTICE OF ADOPTION**Transfer of Franchises or Stock and Water Rates and Charges by Aqua New York Inc. and New York Water Service Corporation****I.D. No.** PSC-28-06-00017-A**Filing date:** Dec. 20, 2006**Effective date:** Dec. 20, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving the joint petition of Aqua New York Inc. and New York Water Service Corporation (NYWS) for the acquisition by Aqua New York Inc. of the stock of the accounting treatment of NYWS's pension and OPEBs expense.

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

Subject: Transfer of stock and water rates and charges.

Purpose: To approve Aqua New York to purchase the stock of New York Water Service, and account for pensions and OPEBs.

Substance of final rule: The Commission adopted an order approving the joint petition of Aqua New York Inc. and New York Water Service Corporation (NYWS) for the acquisition by Aqua New York Inc. of the stock and the accounting treatment of NYWS's pension and OPEBs expense, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0700SA1)

NOTICE OF ADOPTION**Meramec Bushing Current Transformer by Meramec Electrical Products Incorporated****I.D. No.** PSC-34-06-00014-A**Filing date:** Dec. 21, 1006**Effective date:** Dec. 21, 2006

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

Action taken: The commission, on Dec. 13, 2006, approved a petition filed by Meramec Electrical Products Incorporated, to use the Meramec bushing current transformer for metering purposes in commercial and industrial applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of electricity meters, transformers, and auxiliary devices—Case 279.

Purpose: To permit electric utilities in New York State to use the Meramec bushing current transformer.

Substance of final rule: The Public Service Commission approved a petition filed by Meramec Electrical Products Incorporated to permit electric utilities in New York State to use the Meramec Bushing Current Transformer for metering purposes in commercial and industrial applications.

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-0906SA1)

NOTICE OF ADOPTION**Rate Plan Order by the New York State Energy Research and Development Authority (NYSERDA)****I.D. No.** PSC-36-06-00001-A**Filing date:** Dec. 22, 2006**Effective date:** Dec. 22, 2006

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

Action taken: The commission, on Dec. 13, 2006, approved the request of New York State Energy Research and Development Authority (NYSERDA) to revise the electric rate order, and approved the new allocation methodology for funding demand side management programs in Consolidated Edison Company of New York, Inc.'s (Con Edison) service territory. The commission denied Con Edison's request for modification of the rate order.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Approve a request for modification of a rate order and other and related issues.

Purpose: To approve the modification of the manner in which funds for demand management initiatives in Con Edison's service territory are expended, and related issues.

Substance of final rule: The Public Service Commission approved the request of New York State Energy Research and Development Authority to revise the Electric Rate Order and approved a new allocation methodology for funding demand side management programs in Consolidated Edison Company of New York, Inc. (Con Edison) service territory and denied Con Edison's request for modification of the Rate Order, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0572SA9)

NOTICE OF ADOPTION**Water Rates and Charges by the Birch Hill Water Supply Corporation****I.D. No.** PSC-36-06-00005-A**Filing date:** Dec. 21, 2006**Effective date:** Dec. 21, 2006

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

Action taken: The commission, on Dec. 13, 2006, approved a request filed by the Birch Hill Water Supply Corporation to make a change in the

rates and charges contained in its tariff schedule P.S.C. No. 3—Water, to become effective Jan. 1, 2007.

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

Subject: Water rates and charges.

Purpose: To continue Birch Hill Water Supply Corporation's escrow account to cover the cost of redeveloping two abandoned wells.

Substance of final rule: The Commission adopted an order approving Birch Hill Water Supply Corporation's tariff filing to continue the \$55 per quarter, per customer surcharge for an additional seven billing periods, effective January 1, 2007, to recover the cost of redeveloping two abandoned wells, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0992SA1)

NOTICE OF ADOPTION

Itron 60W Water Meter Module by New York Water Service Corporation

I.D. No. PSC-36-06-00017-A

Filing date: Dec. 21, 2006

Effective date: Dec. 21, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving the petition of New York Water Service Corporation to allow the use of the Itron 60W water meter module for use in metering and revenue billing applications.

Statutory authority: Public Service Law, section 89(d)(1)

Subject: Approval of new types of water meters and auxillary devices.

Purpose: To permit water utilities in New York State to use the Itron 60W water meter module.

Substance of final rule: The Commission adopted an order approving the petition of New York Water Service Corporation to allow the use of the Itron 60W Water Meter Module for use in metering and revenue billing applications.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0986SA1)

NOTICE OF ADOPTION

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries by Various Local Gas Distribution Companies and Municipalities

I.D. No. PSC-42-06-00012-A

Filing date: Dec. 22, 2006

Effective date: Dec. 22, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order concerning the filings by various local gas distribution companies (LDC) and municipalities regarding their annual reconciliation of gas expenses and gas cost recoveries.

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

Subject: Annual reconciliation of gas expenses and gas cost recoveries.

Purpose: To consider the filings of various LDCs and municipalities regarding their annual reconciliation of gas expenses and gas cost recoveries.

Substance of final rule: The Commission adopted an order concerning the filings made by various local gas distribution companies and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-1168SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Avalon Bay Communities, Inc.

I.D. No. PSC-02-07-00005-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part the petition filed by Avalon Bay Communities, Inc. to submeter electricity at 27 Memorial Hwy., New Rochelle, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Avalon Bay Communities, Inc. to submeter electricity at 27 Memorial Hwy., New Rochelle, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Avalon Bay Communities, Inc. to submeter electricity at 27 Memorial Highway, New Rochelle, Brooklyn, New York.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillong, 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-1535SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Customer Contribution for Unusual Expenditures to Supply Service by Niagara Mohawk Power Corporation

I.D. No. PSC-02-07-00006-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 Niagara Mohawk Power Corporation to make various changes in the rates, charges,

rules and regulations contained in its schedule for electric service, P.S.C. No. 207, to become effective March 26, 2007.

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

Subject: Customer contribution for unusual expenditures to supply service.

Purpose: To establish when it may be necessary for customers to contribute to the cost of facilities to supply service because of location or character of customer's installation.

Substance of proposed rule: The Commission is considering Niagara Mohawk Power Corporation's (Niagara Mohawk's) request to modify Rule No. 4—Customer Use of Service contained in its electric tariff, P.S.C. No. 207. Niagara Mohawk proposes the addition of Rule No. 4.2.2 to more clearly define the circumstances under which Niagara Mohawk may seek reasonable assurance from a customer if a proposed load increase involves unusual conditions related to the location of character of additional facilities. The proposed effective date of Niagara Mohawk's filing is March 27, 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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-E-1548SA1)

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

Proration of Bills by National Fuel Gas Distribution Corporation

I.D. No. PSC-02-07-00007-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 National Fuel Gas Distribution Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 8, to become effective March 22, 2007.

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

Subject: Proration of bills.

Purpose: To revise the methodology for the proration of customer bills.

Substance of proposed rule: The Commission is considering National Fuel Gas Distribution Corporation's (National Fuel's) request to revise its methodology for the proration of customer bills. The proposed effective date of National Fuel's filing is March 22, 2007. The Commission may approve, reject or modify, in whole or in part, National Fuel'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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-G-1553SA1)

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

Tariff Revisions by Mt. Ebo Water Works, Inc.

I.D. No. PSC-02-07-00008-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 approve or reject, in whole or in part, or modify, tariff revisions filed by Mt. Ebo Water Works, Inc. to make various changes in the rates, charges, rules and regulations in its tariff schedule, P.S.C. No. 1—Water, to become effective Feb. 1, 2007.

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

Subject: Water rates and charges.

Purpose: To increase Mt. Ebo Water Works, Inc.'s annual revenues by about \$145,997 or 64.2 percent.

Substance of proposed rule: On December 8, 2006, Mt. Ebo Water Works, Inc. (Mt. Ebo or the company) filed to become effective February 1, 2007, 1st Revised Leaf Nos. 8, 9 and Original Leaf No. 10 to its tariff schedule, P.S.C. No. 1—Water. Mt. Ebo requests to increase its annual revenues by about \$145,997 or 64.2%. The company provides metered water service to approximately 400 customers in a real estate development known as Fieldstone Pond Condominiums in the Town of Southeast, Putnam County. Mt. Ebo's quarterly service charge for residential service would increase from \$37.50 to \$61.50, and the usage rates would increase from \$2.50 to \$4.11 per thousand gallons. The quarterly public fire service charge would increase from \$112 to \$184 per hydrant. The quarterly private fire service charge for a 6" connection would increase from \$112 to \$184; 8" connection from \$224 to \$368; and, 10" connection from \$336 to \$552. The annual hose bib charge would increase from \$67.50 to \$111. The company's revised tariff defines when a bill will be delinquent and establishes a Late Payment Charge of 1-1/2% on unpaid bills of 30 days or longer and a Returned Check Charge equal to the bank charge plus a handling fee of \$5, not to exceed \$20 in total. The Commission may approve or reject, in whole or in part, or modify, the company's proposed tariff revisions.

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

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

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

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

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

(06-W-1552SA1)

Department of State

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Energy Conservation Construction Code

I.D. No. DOS-02-07-00009-P

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

Proposed action: Amendment of section 1240.1 of Title 19 NYCRR.

Statutory authority: Energy Law, section 11-103(2)

Subject: Efficient utilization of energy expended in the construction, use and occupancy of buildings (the New York State Energy Conservation Construction Code).

Purpose: To amend the New York State Energy Conservation Construction Code to assure that it effectuates the purposes of article 11 of the Energy Law and the specific objectives and standards set forth in such article.

Public hearing(s) will be held at: 10:00 a.m., Feb. 26, 2007 at Department of State, 41 State St., 11th Fl., Conference Rm., Albany, NY; 10:00 a.m., Feb. 27, 2007 at Hughes State Office Bldg., 333 E. Washington St., Main Hearing Rm., First Fl., Syracuse, NY; 1:00 p.m., Feb. 28, 2007 at Amherst Town Hall, 5583 Main St., Council Chambers, Upper Level, Williamsville, NY; and 10:00 a.m., March 2, 2007 at Town of Hempstead Pavilion, One Washington St., Hempstead, NY.

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

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

Text of proposed rule: Section 1240.1 of Title 19 NYCRR is amended to read as follows:

Requirements for the design of building envelopes for adequate thermal resistance and low air leakage and for the design and selection of mechanical, electrical, service water-heating and illumination systems and equipment which enables effective use of energy in new building construction are set forth in a publication entitled Energy Conservation Construction Code of New York State [, publication date: May 2002] (*December, 2006 Edition*), published by [the International Conference of Building Officials (ICBO)] *International Code Council, Inc.* Copies of said publication may be obtained from the publisher at the following address:

[International Conference of Building Officials] *International Code Council, Inc.*

5360 Workman Mill Road
Whittier, CA 90601-2298

Said publication is available for public inspection and copying at:
New York State, Department of State
Codes Division
41 State Street
Albany, NY 12231-0001

Text of proposed rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, 41 State St., Albany, NY 12231, (518) 474-4073, e-mail: randrews@dos.state.ny.us

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

Public comment will be received until: March 12, 2007.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY

Energy Law Section 11-103(2) authorizes the State Fire Prevention and Building Code Council (the "Code Council") to review and amend the State Energy Conservation Construction Code (the "State Energy Code"), provided the State Energy Code remains cost effective with respect to building construction. Energy Law Section 11-103(2) provides that the State Energy Code is cost effective if the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a 10 year period in a building where such materials are installed.

Energy Law section 11-104 provides that the State Energy Code must be designed to satisfy the following criteria:

- as far as practicable, the State Energy Code's standards and requirements must be formulated in terms of performance objectives;
- to the fullest extent feasible, use of modern technical methods, devices and improvements which tend to minimize consumption of energy and utilize to the greatest extent practical solar and other renewable sources of energy without affecting reasonable requirements for the health, safety and security of the occupants or users of buildings must be permitted;
- as far as practicable, the improvement of energy conservation construction must be encouraged;
- reasonable uniform standards and requirements for construction and construction materials for the improvement of energy conservation construction practices must be provided; and

- property that is listed on the national register of historic places, listed on the State Register of historic places, or determined to be eligible for listing on the State register by the Commissioner of Parks, Recreation and Historic Preservation must be exempted from the State Energy Code's uniform standards.

2. LEGISLATIVE OBJECTIVES

Article 11 of the Energy Law, entitled State Energy Conservation Construction Code Act, was first adopted by the State Legislature in 1978. Energy Law section 11-101 directs the adoption of a State Energy Code to protect the health, safety and security of the people of the State and to assure a continuing supply of energy for future generations. Energy Law section 11-101 provides that the State Energy Code must mandate that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in New York State. Energy Law section 11-101 further states that adoption of the State Energy Code is in furtherance of the following policy, as set forth in Energy Law section 3-101(2):

"to encourage conservation of energy in the construction and operation of new commercial, industrial, and residential buildings, and in the rehabilitation of existing structures, through heating, cooling, ventilation, lighting, insulation and design techniques and the use of energy audits and life-cycle costing analysis."

Pursuant to Energy Law section 11-103(2), the Code Council has reviewed the existing State Energy Code and determined that it no longer adequately effectuates the policies and purposes articulated by the State Legislature when it adopted Article 11 of the Energy Law.

The Code Council proposes to repeal the existing State Energy Code, which is based on text of the 2000 edition of the International Energy Conservation Code, a model code developed and published by the International Conference of Building Officials ("ICBO"), and the 2001 supplement thereto, and replace it with a new State Energy Code, which will be based on the 2003 edition of the International Energy Conservation Code. The revised text will provide for the continued widespread use of modern technical methods and devices and will maintain harmonization of the New York energy conservation regulations with those of other states which use a model energy code. The standardization of the practices, methods and techniques used for energy conservation in New York with the practices, methods and techniques used in other states will maintain and enhance New York State's competitive standing in attracting new business and jobs to the State.

3. NEEDS AND BENEFITS

The proposed rule would amend the State Energy Code by repealing the existing text and adopting new text which, in principal part, consists of provisions developed and published by the International Code Council as the International Energy Conservation Code (IECC) 2003. Certain modifications have been made to the IECC text to address specific New York needs. The proposed rule will include updated technologies and increase energy conservation requirements for residential and commercial buildings. This will insure that energy efficient construction practices continue to occur within New York State.

One of the primary benefits of the proposed State Energy Code to building owners would be reduced fuel needs and thereby lower operating costs. Reduced energy consumption will have a tremendous positive benefit to New York State by reducing dependence upon imported energy sources and through the reduction of associated emissions and pollutants produced by fossil fuel and electric use.

Further information concerning the needs and benefits of significant provisions of the revised State Energy Code are further discussed in the full Regulatory Impact Statement.

STUDIES WHICH SERVED AS A BASIS FOR THE RULE

Seven studies served as a basis for the rule. These studies are:

- A. Climate Classification for Building Energy Codes and Standards, R. S. Briggs, R. G. Lucas and Z. T. Taylor, Pacific Northwest National Laboratory for the United States Department of Energy, March 26, 2002.
- B. Eliminating Window-Area Restrictions in the IECC, Z. T. Taylor, C. C. Conner, R. G. Lucas, Pacific Northwest.
- C. Comparison of the Supplement to the 2004 IECC to the Current New York Energy Conservation Code - Residential Buildings, R. G. Lucas, Pacific Northwest National Laboratory for the United States Department of Energy, September, 2004.
- D. Analysis of IECC 2003 Chiller Heat Recovery for Service Water Heating Requirements for New York State, D. W. Winiarski, Pacific Northwest National Laboratory for the United States Department of Energy, August, 2004.

- E. New York State Code Adoption Analysis: Lighting Requirements, E. E. Richman, Pacific Northwest National Laboratory for the United States Department of Energy, June, 2004.
- F. Technical Analysis of Residential Energy Code Options for New York State, A. Fisk, B. McVoy and W. Parlapiano, NYSERDA, M. DeWein, Building Codes Assistance Project, et. al., February, 2005.
- G. Economic Analysis of Residential Energy Code Options for New York State, S. Nadel, American Council for an Energy-Efficient Economy, March, 2005.

4. COSTS

- a. Costs to regulated parties.

The proposed rule is intended to decrease energy use within New York State. The expectation is that the economic impact of the proposed rule will be beneficial rather than adverse. Article 11 of the Energy Law provides that the State Energy Code may be amended so long as it remains cost effective "with respect to building construction in the state." The cost to regulated parties as a result of this proposed rule will vary depending on which compliance method is used.

Energy Law section 11-103(2) specifies that "the code shall be deemed cost effective if the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a ten-year period in the building in which they are installed." The additional costs of materials and their installation to achieve conservation improvements required by the proposed rule will result in a payback within ten-years, thereby satisfying the statutory requirement.

- b. Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule

It is not anticipated that this rule will place any greater burden on local governments than what currently exists as it pertains to code enforcement and administration. Furthermore, the Department of State – Division of Code Enforcement and Administration has a program in place for training local government code enforcement officials. The staff of the Division of Code Enforcement and Administration has undergone training to assist local governments.

Further information concerning costs concerning significant provisions of the new State Energy Conservation Construction Code are further discussed in the full Regulatory Impact Statement.

5. LOCAL GOVERNMENT MANDATES

Adoption of the proposed rule would do nothing to change that basic enforcement and administrative structure of the State Energy Conservation Construction Code. Energy Law section 11-107 provides that the State Energy Code will be principally administered and enforced by the cities, towns and villages of New York.

Local government personnel will require training in the details of this rule. The Department of State – Division of Code Enforcement and Administration has a program in place for training local government code enforcement officials. This training will provide knowledge to enable local government to enforce the proposed rule.

6. PAPERWORK

This rule will not impose any additional reporting or record keeping requirements. No additional paperwork is anticipated.

7. DUPLICATION

The proposal does not duplicate, nor is it inconsistent with any existing Federal Law. The Department Of Energy has issued a determination that the 2000 editions of the International Energy Conservation Code (IECC) and ASHRAE Standard 90.1-1999 will improve energy efficiency in residential and commercial buildings. Each state is required to certify to DOE that its energy code mandates that commercial buildings meet the requirements of ASHRAE/IESNA 90.1-1999. The Department of State provided the required certification on March 26, 2004.

Subdivision 3 of Energy Law section 11-103 provides that any regulations of other State agencies pertaining to energy conservation be superseded by the adoption of the State Energy Code.

8. ALTERNATIVES

It is the policy of the Department of State to modernize and amend the State Energy Code and Chapter 11 of the Residential Code regularly, so as to maintain consistency with national model codes, to keep energy construction practices in New York State consistent with practice nationally, and to incorporate new technical developments in a timely manner. Consequently, the alternative of maintaining existing provisions of the State Energy Code was rejected.

Further information concerning alternatives considered concerning significant provisions of the new State Energy Conservation Construction Code are further discussed in the full Regulatory Impact Statement.

9. FEDERAL STANDARDS

Title III of the Energy Conservation and Production Act (ECPA), establishes requirements for the Building Energy Standards Program [42 U.S.C. 6831 – 6837]. Further discussion of these requirements is contained in the full Regulatory Impact Statement.

10. COMPLIANCE SCHEDULE

The target date for publication of a notice of adoption for this rule is mid-2007. It is anticipated that the revised State Energy Code will become effective immediately upon publication of the notice of adoption.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule making will repeal current provisions of the State Energy Conservation Construction Code (the "State Energy Code"), which is based on the 2000 edition of the International Energy Conservation Code, a model code developed and published by the International Conference of Building Officials ("ICBO"), and replace it with new text based on the 2003 edition of the International Energy Conservation Code, a model code developed and published by the International Code Council ("ICC"). The State Energy Code, which is adopted pursuant to Article 11 of the Energy Law, is applicable in all areas of the State. Therefore, all areas of the State will be affected by this proposed rule making.

Small businesses that construct, own, or operate buildings or structures will be required to comply with the State Energy Code, as amended by this rule making. Businesses that provide services to building owners, such as facility managers, design professionals (e.g., architects and engineers), general and specialty contractors (including home builders), and product suppliers, though not directly regulated by this rule, will be impacted by this rule. It is not possible to calculate the exact number of businesses that will be affected by this rule, but the number is likely to be large. For example, as of April of 2004, there were 13,731 active registered architects and 27,483 active registered engineers in New York State.

Similarly, all local governments that construct, own, or operate buildings or structures will be required to comply with the State Energy Code, as amended by this rule making. In that respect, all or most of the local governments in this State will be affected by this rule making. However, the impact of this rule making on local governments, in their capacity as building owners and operators, will be essentially identical to the impact of this rule making on all other parties, public or private, that own or operate buildings.

This rule making will have an additional impact on most cities, towns and villages in this State: Energy Law section 11-107 provides that the administration and enforcement of the State Energy Code within any municipality shall be the responsibility of the governmental entity responsible for administration and enforcement of the building construction code or the fire prevention and building construction code applicable within the municipality. Executive Law section 381 provides that every city, town, and village of the State shall administer and enforce the Uniform Fire Prevention and Building Code within their boundaries except in limited specified circumstances. Consequently, most cities, towns and villages in the State are currently responsible for the administration and enforcement of the current State Energy Code within their boundaries, and will remain responsible for administering and enforcing the State Energy Code as amended by this rule making. In that respect, those cities, towns and villages will be affected by this rule making.

2. COMPLIANCE REQUIREMENTS.

Construction documents are currently submitted when a building permit is requested. The energy compliance aspect is part of the construction documents. The State Energy Code, as amended by this rule making, will not change this procedure.

Energy calculations may also currently be requested by code enforcement officers. This will remain under the State Energy Code, as amended by this rule making.

This rule will not change local government's responsibility for administering and enforcing the State Energy Code. These requirements are referenced in Section 11-107 of the Energy Law. The administration and enforcement of the provisions of the State Energy Code within any municipality shall be the responsibility of that governmental entity which is responsible for the administration and enforcement of the provisions of the building code. The code shall be administered and enforced in the manner prescribed by applicable local law or ordinance or the procedures adopted pursuant to section three hundred eighty-one of the executive law for the administration and enforcement of the state uniform fire prevention and building code.

Local governments currently maintain inspection records. This will continue under the State Energy Code, as amended by this rule making.

3. PROFESSIONAL SERVICES.

Regulated parties will continue to rely upon design, construction and energy conservation professionals to properly advise them of the requirements of the State Energy Code as amended by this rule making. Building owners typically rely on professionals for their expertise in building and energy conservation regulations.

4. COMPLIANCE COSTS.

It is anticipated that regulated parties will recognize energy conservation savings as a result of this rule making.

Section 11-103 of the Energy Law authorizes the State Fire Prevention and Building Code Council to review and amend the State Energy Code through rules and regulations, provided that the code remains cost effective with respect to building construction in the State. Energy Law section 11-102(2) provides that "the (State Energy Code) shall be deemed cost effective if the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a ten year period in the building in which such materials are installed."

There will be no initial costs incurred by local government for implementation of rule.

Indirectly impacted parties, such as architects, engineers, designers, contractors, and builders, will need to receive training. Initial training costs in the range of \$150 to \$200 per person based upon a class size of 20 to 25 persons is anticipated. It is a customary for registered design professionals and construction personnel to receive continuing education throughout their careers. Thus, this rule will not place an additional burden on indirectly impacted parties in any greater proportion than which is already incurred by the existing rule. Furthermore, in New York State, architects are required by the Education Law to receive continuing education in order to maintain an active registration to practice.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

This rule will offer regulated parties a broad range of compliance options. The Code provisions are performance based, and thus, will allow regulated parties the opportunity to select the most cost-effective alternative for compliance.

Regulatory change, like technological innovation, is constant in the construction industry. Regulated parties as well as those who provide services to them (*i.e.*, architects, engineers, designers, contractors, and builders) are accustomed to such change. This rule making is expected to encourage innovation in the construction industry, and provide small businesses more opportunity to grow.

Several training resources are available both within and outside the state to assist impacted parties master the proposed new provisions of the State Energy Conservation Construction Code. These include trainers affiliated with the ICC and other specialized training professionals. Other competent entrepreneurs will undoubtedly be encouraged to join the market to meet the demand for this specialized training. The staff of the Division of Code Enforcement and Administration will provide training for local officials to administer and enforce the code.

6. MINIMIZING ADVERSE EFFECTS.

This rule change will impact all types of small businesses.

The Department of State – Division of Code Enforcement and Administration will provide training for the new Energy Code for local government enforcement personnel in the state.

Some training and education to architects and engineers will be provided by the Department of State and NYSERDA. A workbook, manual and software will be available to further enhance the training and education provided by the Department Of State and NYSERDA. Computer software will continue to be available to assist regulated parties.

In order to assure a continuing supply of energy for future generations and since the health, safety and security of the people of the state are clearly at issue, exemption from coverage by the rule was not considered an option for minimizing the impact on local government and/or small business.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

To assist the Code Council in the development of this proposed rule making, a technical subcommittee was established to review the International Energy Conservation Construction Code and make recommendations to insure that a new State Energy Conservation Construction Code incorporate developing design and construction issues and needs.

The International Energy Conservation Code subcommittee included a broad range of professionals including building and fire code officials representing local governments and individuals representing various fields such as architecture, engineering, construction, and small business. The

members comprising the committee also represented a diversity of geographic locations throughout New York State. Their knowledge and expertise pertaining to their particular fields and varied backgrounds provide a broad range of perspectives and expertise.

Meetings throughout the rule making process have included regulated parties and code enforcement personnel of local governments throughout New York State. Technical subcommittee meeting were open to the public and agendas and meeting minutes posted on the DOS website. Proposed New York modifications made by the Technical Subcommittee were posted on the DOS website for public inspection. Code update presentations by DOS staff were made to various groups: December 2, 2005 - New York State Building Officials Conference in Jericho, NY, February 1 - Niagara Frontier Building Officials 21st Annual Educational Conference in Amherst, February 2 - code officials in Rockland County and fire chiefs and their State Legislatures in Pearl River, February 15 - Construction Specification Institute in Albany, February 23 - Association of Towns in New York City, March 21 - Finger Lakes Building Officials Association in Rochester, New York, April 14 - NYS Parks, Recreation and Historic Preservation in Schaghticoke, April 21 - Central Chapter of the New York State Building Officials Conference in Liverpool, April 29 - Society of Fire Protection Engineers in Albany. In addition, the Department of State held public forums on the proposed updates. They took place in May, 2005 in Rochester, Hempstead and Albany. The intent of the forums was to provide comments for support and opposition on the proposals advanced by the technical subcommittee. The written comments were posted on the DOS web site prior to the forums to allow other potential speakers the opportunity to see what the issues were.

Comments from the forum were provided to the State Fire Prevention and Building Code Council prior to the proposed rule making to the codes. Public hearings will be held after a notice of proposed rule making has been published in the State Register in accordance with the provisions of the State Administrative Procedure Act.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule making will repeal current provisions of the State Energy Conservation Construction Code (the "State Energy Code"), which is based on the 2000 edition of the International Energy Conservation Code, a model code developed and published by the International Conference of Building Officials ("ICBO"), and replace it with new text based on the 2003 edition of the International Energy Conservation Code, a model code developed and published by the International Code Council ("ICC"). The State Energy Code, as it now exists and as it will be amended by this rule making, is applicable in all areas of the State. Therefore, all rural areas of the State will be affected by this rule making.

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

Construction documents are currently submitted when a building permit is requested. The energy compliance aspect is part of the construction documents. The State Energy Code, as amended by this rule making, will not change this procedure. Energy calculations may also currently be requested by code enforcement officers. This will remain under the amended State Energy Code.

Energy Law section 11-107 provides that the administration and enforcement of the provisions of the State Energy Code within any municipality shall be the responsibility of that governmental entity which is responsible for the administration and enforcement of the provisions of the building construction code or the fire prevention and building construction code applicable within such municipality. Therefore, New York State local governments are, generally, responsible for the administration and enforcement of the State Energy Code. Energy Law section 11-107 also provides that the State Energy Code will be administered and enforced in the manner prescribed by applicable local law or ordinance or the procedures adopted pursuant to section three hundred eighty-one of the Executive Law for the administration and enforcement of the state uniform fire prevention and building construction code.

Local governments currently maintain inspection records. This will continue under the State Energy Code as amended by this rule making.

Regulated parties will continue to rely upon design, construction and energy conservation professionals to properly advise them of the requirements of the State Energy Code. Building owners typically rely on professionals for their expertise in building and energy conservation regulations.

3. COSTS.

The proposed rule making is intended to decrease energy use within New York State and increase energy savings to the consumer. The economic impact of the State Energy Code, as amended by this rule making, is

expected to be beneficial rather than adverse. In any event, any economic impact associated with this rule making will not affect rural areas in a manner different from the rule's effect upon urban and suburban areas of the state.

4. MINIMIZING ADVERSE IMPACT.

This rule is performance based and requires that uniform standards be met for all areas of the state. It is anticipated that the impact on rural areas will be minimal.

This rule will require compliance and reporting requirements similar to those currently in place.

In order to assure a continuing supply of energy for future generations, and since the health, safety and security of the people of the state are clearly at issue, exemption from coverage by the rule was not considered an option for minimizing the impact on rural areas.

5. RURAL AREA PARTICIPATION.

To assist the State Fire Prevention and Building Code Council in the development of this proposed rule making, a technical subcommittee was established to review the 2003 edition of the International Energy Conservation Construction Code and make recommendations for modifications. The International Energy Conservation Code technical subcommittee had participants from rural areas. Meetings of the subcommittee were open to the public and public participation was encouraged.

Meetings throughout the rule making process have included regulated parties and code enforcement personnel of local governments throughout New York State. Technical subcommittee meetings were open to the public and agendas and meeting minutes posted on the Department of State website. Proposed New York modifications made by the various Technical Subcommittees were posted on the Department of State website for public inspection. Code update presentations by Department of State staff were made to various groups: December 2, 2005 - New York State Building Officials Conference in Jericho, NY, February 1 - Niagara Frontier Building Officials 21st Annual Educational Conference in Amherst, February 2 - code officials in Rockland County and fire chiefs and their State Legislatures in Pearl River, February 15 - Construction Specification Institute in Albany, February 23 - Association of Towns in New York City, March 21 - Finger Lakes Building Officials Association in Rochester, New York, April 14 - NYS Parks, Recreation and Historic Preservation in Schaghticoke, April 21 - Central Chapter of the New York State Building Officials Conference in Liverpool, April 29 - Society of Fire Protection Engineers in Albany. In addition, the Department of State held public forums on the proposed updates. They took place in May, 2005 in Rochester, Hempstead and Albany. The intent of the forums was to provide comments for support and opposition on the proposals advanced by the technical subcommittees. The written comments were posted on the Department of State web site prior to the forums to allow other potential speakers the opportunity to see what the issues were.

Comments from the forum were provided to the State Fire Prevention and Building Code Council prior to this proposed rule making. Public hearings will be held after a notice of proposed rule making has been published in the State Register in accordance with the provisions of the State Administrative Procedure Act.

Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the proposed rule making that it will not have a substantial adverse impact on jobs and employment opportunities. The rule making will repeal current provisions of the State Energy Conservation Construction Code (the "State Energy Code"), which is based on the 2000 edition of the International Energy Conservation Code, a model code developed and published by the International Conference of Building Officials ("ICBO"), and replace it with new text based on the 2003 edition of the International Energy Conservation Code, a model code developed and published by the International Code Council ("ICC"). The 2003 edition of the International Energy Conservation Code incorporates more current technology in the area of energy conservation. In addition, as a performance-based, rather than a prescriptive, code, the International Energy Conservation Code provides for alternative methods of achieving code compliance, thereby allowing regulated parties to choose the most cost effective method. As a consequence, the Department of State and the State Fire Prevention and Building Code Council conclude that regulations based upon the 2003 edition of the International Energy Conservation Code will provide a greater incentive to building construction and the rehabilitation of existing buildings than exists with the current State Energy Code. Therefore, this rule making will not have a substantial adverse impact on jobs and employment opportunities within New York. In fact,

the proposed rule may result in an increase in employment opportunities by eliminating current barriers to the rehabilitation of existing buildings.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Uniform Fire Prevention and Building Code

I.D. No. DOS-02-07-00010-P

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

Proposed action: Repeal of Parts 1220-1226 and addition of new Parts 1219-1227 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: Standards for the construction and maintenance of buildings and structures and for protection from the hazards of fire (the New York State Uniform Fire Prevention and Building Code).

Purpose: To amend the New York State Uniform Fire Prevention and Building Code to assure that it effectuates the purposes of article 18 of the Executive Law and the specific objectives and standards set forth in such article.

Public hearing(s) will be held at: 10:00 a.m., Feb. 26, 2007 at Department of State, 41 State St., 11th Fl., Conference Rm., Albany, NY; and 10:00 a.m., Feb. 27, 2007 at Hughes State Office Bldg., 333 E. Washington St., Main Hearing Rm., First Fl., Syracuse, NY; 1:00 p.m., Feb. 28, 2007 at Amherst Town Hall, 5583 Main St., Council Chambers, Upper Level, Williamsville, NY; and 10:00 a.m., March 2, 2007 at Town of Hempstead Pavilion, One Washington St., Hempstead, NY.

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

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

Substance of proposed rule (Full text is not posted on a State website): Section 377 of the Executive Law directs the State Fire Prevention and Building Code Council (the "Code Council") to review the entire New York State Uniform Fire Prevention and Building Code (the "Uniform Code") from time to time to assure that it effectuates the purposes of the Law, and authorizes the Code Council to amend the Uniform Code from time to time to achieve that end. The rule making would repeal the existing version of the Uniform Code (which is now found in 19 NYCRR Parts 1220 to 1226, inclusive, and in the publications incorporated by reference therein) and replace it with a new version of the Uniform Code, to be contained in new 19 NYCRR Parts 1219 to 1227, inclusive, and the new publications to be incorporated therein by reference.

The new version of the Uniform Code will include eight components: the Building Code, the Residential Code, the Fire Code, the Plumbing Code, the Mechanical Code, the Fuel Gas Code, the Property Maintenance Code, and the Existing Building Code.

The Building Code establishes life safety construction requirements for assembly, business, educational, factory industrial, high hazard, institutional, mercantile, multi-family residential, storage and utility and miscellaneous buildings.

The Residential Code addresses one- and two-family dwellings and townhouses not more than three stories in height with a separate means of egress and their accessory structures.

The Fire Code provides requirements for life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings.

The Plumbing Code, Mechanical Code and Fuel Gas Code addresses the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing systems, mechanical systems and fuel gas systems.

The Property Maintenance Code provides minimum requirements to safeguard public safety, health and general welfare insofar as they are affected by the occupancy and maintenance of structures and premises.

The Existing Building Code provides minimum requirements to safeguard public safety, health and general welfare insofar as they are affected by the repair, alteration, change of occupancy, addition and relocations of existing buildings.

Text of proposed rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, 41 State St., Albany, NY 12231, (518) 474-4073, e-mail: randrews@dos.state.ny.us

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

Public comment will be received until: March 12, 2007.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY

Article 18 of the Executive Law entitled, the New York State Uniform Fire Prevention and Building Code Act establishes the State Fire Prevention and Building Code Council (hereinafter "Code Council") and authorizes such council to formulate a code to be known as the Uniform Fire Prevention and Building Code (hereinafter "Uniform Code"). Executive Law § 377 directs that the Uniform Code shall provide reasonably uniform standards and requirements for construction and construction materials for public and private buildings, including factory manufactured homes, consonant with accepted standards of engineering and fire prevention practices.

Executive Law § 378 provides that the Uniform Code shall address certain specified subjects. The subjects are listed in the full Regulatory Statement.

Subdivision 1 of Executive Law § 377 specifically states that the Code Council may amend particular provisions of the Uniform Code and shall periodically review the entire code to assure that it effectuates the purposes of Article 18 of the Executive Law. This rule making would repeal the existing text of the Uniform Code which is based on the International Code Council's (ICC) 2000 codes and 2001 supplements, and replace it with new text which is based upon the 2003 International Code, eight individual codes developed and published by the International Code Council (ICC), a national building officials organization. Although the existing text of the Uniform Code is to be repealed, much of the new code text will essentially be a recodification of current Uniform Code provisions but with appropriate modification to accommodate advances in construction technology.

2. LEGISLATIVE OBJECTIVES

When the State Legislature adopted Article 18 of the Executive Law in 1981, it declared in Subdivision 2 of Executive Law § 371 that it shall be the public policy of the State of New York to provide for promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the State from the hazards of fire and inadequate building construction. The Code Council was assigned the task of formulating the Uniform Fire Prevention and Building Code which took effect January 1, 1984. However, in the years following 1984, the Uniform Code did not keep pace with the evolving technology of fire prevention and building construction. Furthermore, as the rest of the nation moved to using a nationally accepted set of model codes, New York continued to maintain the separate identity of its building and fire prevention code until January of 2003, when it repealed its entire code and replaced it with text based primarily on the 2000 edition of the International Codes.

The Uniform Code adopted in 2003 was based on international codes, and represented the first major revision of the Uniform Code since its inception in January 1984. This rule making would adopt new text for the Uniform Code, and would constitute the first major update of the international code-based version of the Uniform Code. The Code Council has concluded that this rule making would further the purposes, objectives and standards of Article 18.

By repealing the existing text of the Uniform Code and replacing it with an update based primarily upon newer versions of model codes developed and published by the International Code Council (ICC), the State Fire Prevention and Building Code Council seeks to better effectuate the purposes, objectives, and standards set forth in Article 18 of the Executive Law.

3. NEEDS AND BENEFITS

The purpose of this rule making is to adopt new provisions for the Uniform Fire Prevention and Building Code. This change is necessary if New York State is to remain competitive with the rest of the nation in matters involving building construction while at the same time providing an adequate level of safety to its residents. It is also necessary if New York State wishes to keep pace with evolving technology concerning fire prevention and building construction and to have a building and fire prevention code which is consistent with nationally accepted model codes. The benefits to be derived from the rule making will be the creation of an enhanced economic atmosphere in which building construction is encouraged.

Following Item #10 in the full Regulatory Impact Statement, the Needs and Benefits of significant provisions of the Uniform Code are discussed.

4. COSTS

a. COST TO REGULATED PARTIES FOR THE IMPLEMENTATION OF AND CONTINUING COMPLIANCE WITH THE PROPOSED RULE.

Further information concerning the costs of significant provisions of the Uniform Fire Prevention and Building Code are discussed following Item #10 of the full Regulatory Impact Statement. It is anticipated that regulated parties will experience building development savings as a result of this rule. This rule reflects performance based regulatory requirements providing regulated parties more alternatives to protect the occupants and users of buildings while at the same time fulfilling programmatic space needs at the most cost effective solution.

b. COSTS TO THE AGENCY, THE STATE AND LOCAL GOVERNMENTS FOR THE IMPLEMENTATION AND CONTINUATION OF THE RULE.

The Department of State will enter into a contract with ICC under which ICC will provide (1) a license to modify the copyrighted International Codes to use the modified International Codes as the new Uniform Code, (2) 4,500 sets of the new codes books for local governments, local governmental officials, and Department of State staff, (3) governmental memberships in ICC for approximately 1,600 local governments in New York State, and (4) examinations leading to certification of Department of State staff in a variety of code-enforcement related categories. The sums to be paid under this contract total approximately \$1,395,480 over three years, and represents a cost to the Department of State and the State.

State and local governments should realize cost savings when they construct buildings for their own use in the same way that private builders will be able to recognize these savings as noted in subdivision (a) above.

Further, information concerning cost and savings of the most significant of the new provisions of the Uniform Fire Prevention and Building Code are discussed following Item #10 of this Regulatory Impact Statement.

5. LOCAL GOVERNMENT MANDATES

This rule making will not impose any program, service, duty or responsibility specifically upon counties, cities, towns, villages, school districts, fire districts or other special districts. If any of these governmental entities were to undertake the construction of a building or structure, however, the construction process would be subject to the provisions of the proposed rule. Similarly, existing buildings and structures owned or under the control of local government entities are potentially subject to maintenance or fire prevention provisions of the Uniform Code.

6. PAPERWORK

This rule will not impose any additional reporting or record keeping requirements. No additional paperwork is anticipated.

7. DUPLICATION

The New York State Uniform Fire Prevention and Building Code provides standards for the construction and maintenance of buildings and structures and for the protection of buildings and structures and their occupants from the hazards of fire. These are matters for which the federal government does not impose comprehensive requirements. The federal government has addressed the topic of accessible and usable facilities for the physically disabled, however, through adoption of the Americans with Disabilities Act (ADA) and the Fair Housing Act. The new text proposed for the Uniform Code also requires accessibility to buildings and structures for the physically disabled. Although the existence of federal and state standards may raise issues of overlap or conflict, no such overlap or conflict exists with this proposed rule.

Several State agencies have promulgated regulations which impose requirements upon buildings or structures which house activities which are licensed or regulated by the particular agency. Such regulations may impose an additional layer of regulation upon the construction, maintenance, or use of certain categories of buildings. These other regulations, however, are focused upon activities or occupants regulated or protected by the particular State agency and have been promulgated pursuant to statutory authority other than Article 18 of the Executive Law.

New to this version of the Uniform Code is an index which lists all state agencies that have building code related regulations.

Also new is the New York State Existing Building Code, based on a model existing building code published by the ICC. New York adopted code requirements for existing buildings in January 1, 2003 (titled Appendix K), which was part of the Building Code of New York State. The ICC had not completed a model existing building code in 2003. As a result, New York adopted code requirements based on ICC code requirements as they existed at that point in their development. Now, with this proposal, New York will be adding the ICC Existing Building Code, with modifica-

tions specific to New York, to the other seven 2003 versions of the ICC based codes as a basis for the Codes of the State of New York.

8. ALTERNATIVES

It is the policy of the Department of State to modernize and amend the Uniform Fire Prevention and Building Code, so as to maintain consistency with the national model codes, to keep building practices in New York State consistent with practice nationally, and to incorporate new technical developments in a timely manner. Consequently, the alternative of maintaining existing provisions of the Uniform Code was rejected.

To assist the Code Council, technical subcommittees were established to review the ICC Codes and make recommendations to the Code Council to ensure that the new provisions of the Uniform Code would remain appropriate and addresses developing design and construction issues and needs in New York State.

All subcommittees found it was necessary to recommend changes to the 2003 ICC family of codes. Significant provisions of the proposed new Uniform Fire Prevention and Building Code are discussed with reference to Needs and Benefits, Costs, and Alternatives following Item #10 of this Revised Regulatory Impact Statement.

Numerous hearings and public hearings took place throughout New York State in anticipation of the formal initiation of the rule making process. These meetings are listed in the full Regulatory Impact Statement.

9. FEDERAL STANDARDS

The federal government has adopted the Americans with Disabilities Act (ADA) which requires certain facilities to be accessible and usable by the physically disabled. The new text proposed for the Uniform Code also includes provisions which require buildings and structures to be accessible and usable by the physically disabled. The proposed rule would exceed the minimum standards established by the federal government.

10. COMPLIANCE SCHEDULE

The target date for publishing a notice of adoption for this rule making is mid-2007. It is the intention of the Code Council to establish a transition period to begin with publication of the notice of adoption. During this period, regulated parties will have the option of construction in compliance with either the current code provisions or the newly adopted provisions.

The delay of the effective date of the new Uniform Code provisions until after adoption, and the option of compliance with either the existing or the proposed Code during that period, ensure that regulated parties will be able to achieve compliance with the rule on the date it is adopted.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule would amend the Uniform Fire Prevention and Building Code ("Uniform Code"). The current version of the Uniform Code, which went into effect on January 1, 2003, is based upon the 2000 editions of certain model codes developed by the International Conference of Building Officials ("ICBO"). If adopted, this rule would repeal the existing version of the Uniform Code and add a new version of the Uniform Code based upon the 2003 editions of corresponding model codes developed by the International Code Council ("ICC"), an organization which is a successor of ICBO. An eighth code - the Existing Building Code - which is based on the 2003 version of the model existing building code developed by ICC, will also be added. The Existing Building Code will replace Appendix K of the New York State Building Code.

The Uniform Code is applicable in all areas of the State with the exception of the City of New York. Therefore, all areas of the State except the City of New York will be affected by this rule making, and the rule has the potential to affect all small businesses.

Small businesses that construct, own, or operate buildings or structures will be required to comply with this rule. Businesses that provide services to building owners, such as facility managers, design professionals (e.g., architects and engineers), general and specialty contractors (including home builders), and product suppliers, though not directly regulated by this rule, will be impacted by this rule. It is not possible to calculate the exact number of businesses that will be affected by this rule, but the number is likely to be large. For example, as of April of 2004, there were 13,731 active registered architects and 27,483 active registered engineers in New York State.

This rule making will not impose any duty or responsibility specifically upon local governments except insofar as a particular local government is responsible for the construction or operation of a building which is subject to the provisions of the Uniform Code. In that instance, a local government is in no different situation than that of any building owner or responsible party, public or private. In this respect, adoption of this rule making will affect all cities, towns, and villages of the State.

In addition, Executive Law '381 provides that every city, town, and village of the State shall administer and enforce the Uniform Fire Prevention and Building Code within its boundaries, except in limited specified circumstances. Consequently, in most instances, the individual cities, towns and villages of the State are responsible for enforcement of the Uniform Code within their boundaries, and will be responsible for enforcing the new Uniform Code provisions proposed for adoption by this rule making.

2. COMPLIANCE REQUIREMENTS.

This rule making will not change local government's responsibility for administering and enforcing the Uniform Code. There will be no change in requirements for local governments concerning reporting, record keeping, and other compliance requirements, or professional services.

3. PROFESSIONAL SERVICES.

Regulated parties will continue to rely upon design and construction professionals to advise them of the requirements of the Uniform Code. Building owners typically rely on these design and construction professionals for their expertise in building regulations.

4. COMPLIANCE COSTS.

It is anticipated that regulated parties will realize savings in construction costs as a result of this rule making. Indirectly impacted parties, such as architects, engineers, designers, contractors and builders, will incur the cost of the training necessary to familiarize themselves with the new and changed Uniform Code provisions. The Department of State estimates that, given a typical class size of 20 to 25 persons, the training costs will range from \$150 to \$200 per person for each part (*i.e.*, building code, fire code, residential code, etc.) of the Uniform Code. However, it is a customary practice for registered design professionals and construction personnel to receive continuing education throughout their careers. In New York State, architects are required by the Education Law to receive continuing education in order to maintain an active registration to practice the profession.

Many regulated parties and indirectly impacted parties will be required to purchase an updated set of code books. The Department of State estimates that a full set of new code books (including all eight volumes) will cost approximately \$300.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The new code provisions proposed for adoption by this rule making will continue to provide regulated parties with a broad range of compliance options. These provisions are performance based and therefore provide an opportunity to select the most cost effective alternative for compliance.

Regulatory change, like technological innovation, is constant in the construction industry. Regulated parties as well as those who provide services to them (*i.e.*, architects, engineers, designers, contractors, and builders) are accustomed to such change. This rule making is expected to encourage innovation in the construction industry and to provide increased opportunities for small businesses to grow.

As this adoption consists primarily of an updating of the International Codes (with some New York modifications), the changes resulting from this adoption will be significantly less than the changes that occurred in 2002, when the New York State Uniform Fire Prevention and Building Code that existed since 1984 was entirely replaced, for the first time, with the International Code-based codes.

Several training resources are available for impacted parties to learn the proposed new provisions of the Uniform Code. These include trainers affiliated with the ICC and other specialized training professionals. Other entrepreneurs will undoubtedly be encouraged to join the market to meet the demand for this specialized training. The staff of the Division of Code Enforcement and Administration of the Department of State will provide training for local government enforcement personnel.

6. MINIMIZING ADVERSE IMPACT.

The Department of State - Division of Code Enforcement and Administration will provide training on the new provisions of the Uniform Code for all local government code enforcement personnel in the State. Executive Law '381 provides that local governments which do not wish to enforce the Uniform Code may relinquish that responsibility to the county in which they are located. In turn, a county may relinquish enforcement responsibility to the Department of State. As the health, safety, and security of the people of the State are at issue, exemption from coverage by the rule was not considered an option for minimizing the impact on local governments and/or small businesses.

One critical factor in adopting the ICC codes by New York State in 2002 was the fact that these codes are updated on a three-year cycle to keep up with industry practice and technical and life-safety evolution.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

To assist in the development of this proposed rule making, the Code Council established technical subcommittees to review the individual ICC codes and to make recommendations for modifications that would insure that the new text of the Uniform Code would address current design and construction issues and needs.

The subcommittees consisted of a broad range of members including building and fire code officials representing local governments and individuals representing various interests such as architecture, engineering, construction, small business, historic preservation as well as the needs of the disabled. The members comprising these committees also represented a diversity of geographic locations throughout New York State. Their knowledge and expertise in their particular fields and their varied backgrounds provided a broad range of perspectives.

Meetings throughout the rule making process have included regulated parties and code enforcement personnel of local governments throughout New York State. Technical subcommittee meetings were open to the public and agendas and meeting minutes posted on the DOS website. Proposed New York modifications made by the various Technical Subcommittees were posted on the DOS website for public inspection. Code update presentations by DOS staff were made to various groups: December 2, 2005 - New York State Building Officials Conference in Jericho, NY, February 1 - Niagara Frontier Building Officials 21st Annual Educational Conference in Amherst, February 2 - code officials in Rockland County and fire chiefs and their State Legislatures in Pearl River, February 15 - Construction Specification Institute in Albany, February 23 - Association of Towns in New York City, March 21 - Finger Lakes Building Officials Association in Rochester, New York, April 14 - NYS Parks, Recreation and Historic Preservation in Schaghticoke, April 21 - Central Chapter of the New York State Building Officials Conference in Liverpool, April 29 - Society of Fire Protection Engineers in Albany. In addition, the Department of State held public forums on the proposed updates. They took place in May, 2005 in Rochester, Hempstead and Albany. The intent of the forums was to provide comments for support and opposition on the proposals advanced by the technical subcommittees. The written comments were posted on the DOS web site prior to the forums to allow other potential speakers the opportunity to see what the issues were.

Comments from the forum were provided to the State Fire Prevention and Building Code Council prior to the proposed rule making to the codes. Public hearings will be held after a notice of proposed rule making has been published in the State Register in accordance with the provisions of the State Administrative Procedure Act.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The Uniform Fire Prevention and Building Code (the "Uniform Code") is applicable in all areas of the State with the exception of the City of New York. Therefore, all rural areas of the State will be affected by this rule making. This rule making will repeal the existing text of the Uniform Code, which is based on the 2000 edition of seven model codes developed by the International Conference of Building Officials ("ICBO"), and replace it with text based on the 2003 editions of corresponding model codes developed by the International Code Council ("ICC"), an organization which is a successor of ICBO. An eighth code - the Existing Building Code - which is based on the 2003 version of the model existing building code developed by ICC, will also be added. The Existing Building Code will replace Appendix K of the New York State Building Code.

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

Regulated parties will continue to rely upon design and construction professionals to advise them of the requirements of the Uniform Code. Building owners typically rely on these design and construction professionals for their expertise in building regulations.

3. COSTS:

The new provisions of the Uniform Code are expected to reduce building and development costs in general. The new provisions respond to updates in the building and fire safety industry thereby allowing developers to comply with the Uniform Code more easily and at less cost. This reduction in building and development costs is expected to occur in rural communities as well as urban and suburban areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is performance based and requires uniform standards for building construction and fire prevention in all areas of the State with the exception of New York City. The proposed rule will require compliance and reporting requirements similar to those required by the current provisions of the Uniform Code. As the health, safety and welfare of the people of New York are at issue, exemption from coverage by the rule was not considered an option for minimizing impact on rural areas.

5. RURAL AREA PARTICIPATION:

The technical subcommittees involved in the development of this rule making included members from rural areas. Meetings of the subcommittees were open to the public and public participation was encouraged. Technical subcommittee meetings were open to the public and agendas and meeting minutes were posted on the Department of State website. Proposed New York State modifications made by the various Technical Subcommittees were posted on the DOS website for public inspection. Code update presentations by Department of State staff were made to various groups: December 2, 2005 - New York State Building Officials Conference in Jericho, New York, February 1 - Niagara Frontier Building Officials 21st Annual Educational Conference in Amherst, New York, February 2 - code officials in Rockland County and fire chiefs and their state legislatures in Pearl River, February 15 - Construction Specification Institute of Albany, New York, February 23 - Association of Towns in New York City, March 21 - Finger Lakes Building Officials Association in Rochester, New York, April 14 - New York State Parks, Recreation and Historic Preservation in Schaghticoke, April 21 - Central Chapter of the New York State Building Official's Conference in Liverpool, April 29 - Society of Fire Protection Engineers in Albany, New York. In addition, the Department of State held public forums on the proposed updates. They took place in May, 2005, in Rochester, Hempstead and Albany. The intent of the forums was to provide comments for support and opposition on the proposals advanced by the technical subcommittees. The written comments submitted prior to the forums were posted on the Department of State website to allow other potential speakers the opportunity to see what the issues were. Comments from the forum were provided to the State Fire Prevention and Building Code Council prior to the proposed rule making to the codes. Public hearings will be held after a notice of proposed rule making has been published in the State Register in accordance with the provisions of the State Administrative Procedure Act.

Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the proposed rule making that it will not have a substantial adverse impact on jobs and employment opportunities.

This rule making would repeal the current version of the Uniform Fire Prevention and Building Code (the "Uniform Code"), and add a new version of the Uniform Code. The current version of the Uniform Code, which is found in 19 NYCRR Parts 1220, 1221, 1222, 1223, 1224, 1225, and 1226 and the publications incorporated by reference therein, went into effect January 1, 2003 and is based on the 2000 editions of the International Residential Code, International Building Code, International Plumbing Code, International Mechanical Code, International Fuel Gas Code, International Fire Code, and International Property Maintenance Code, as developed by the International Conference of Building Officials ("ICBO"). The new version of the Uniform Code will be based on the 2003 editions of corresponding International Codes as developed by the International Code Council ("ICC"), a successor to ICBO. In addition, the new version of the Uniform Code will include a new Part 1227, which will be based on the 2003 edition of the International Existing Building Code as developed by ICC.

The International Codes incorporate the most current technology in the areas of building construction and fire prevention. To maintain this currency, the International Codes are updated every three years. As a consequence, the Department of State concludes that this update, which is based upon the newer (2003) versions of the International Codes, will provide a greater incentive to construction of new buildings and rehabilitation of existing buildings than exists with the current Uniform Code. Therefore, this rule making will not have a substantial adverse impact on jobs and employment opportunities within New York.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Child Support Standards Chart

I.D. No. TDA-41-06-00034-A

Filing No. 1585

Filing date: Dec. 22, 2006

Effective date: Jan. 10, 2007

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

Action taken: Amendment of section 347.10(a)(9), (b) and (c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 111-a and 111-i

Subject: Child support standards chart.

Purpose: To update the child support calculations formula as reflected in the child support standards chart.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-41-06-00034-P, Issue of October 11, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Jeanine Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

EMERGENCY RULE MAKING

Independent Medical Examinations

I.D. No. WCB-02-07-00002-E

Filing No. 1582

Filing date: Dec. 22, 2006

Effective date: Dec. 22, 2006

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 10 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 March 21, 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: Office-GeneralCounsel@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 sug-

gestion 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.