

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.

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Aid to Soil and Water Conservation Districts

I.D. No. AAM-29-07-00018-P

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

Proposed action: Amendment of Part 363 of Title 1 NYCRR; and repeal of Part 4400 of Title 21 NYCRR.

Statutory authority: Soil and Water Conservation Districts Law, sections 4 and 11-a

Subject: Procedures to provide State aid to soil and water conservation districts.

Purpose: To provide a mechanism for the distribution of financial assistance, within available funds, to soil and water conservation districts.

Text of proposed rule: Part 4400 of Title 21 of NYCRR is repealed.

The Part title for Part 363 of Title 1 of NYCRR is amended to read as follows:

STATE [REIMBURSEMENT] AID TO SOIL AND WATER CONSERVATION DISTRICTS

Sections 363.2, 363.3 and 363.4 of Title 1 of NYCRR are amended to read as follows:

Section 363.2 Reimbursement Applicability.

Districts [are] *shall be* eligible for reimbursement by the [department] *State* to the extent of 50 percent of the amount expended by the district, *up to thirty thousand dollars per district in any fiscal year*, for the employment of conservation field technicians or district managers and the purchase of supplies and equipment related to these positions, [pursuant to the provisions of section 11-a of the New York State Soil and Water Conservation Districts Law.] *for the purpose of supervising or providing technical assistance for the establishment and implementation of soil and water conservation practices in accordance with programs undertaken by the district pursuant to the provisions of section 11-a (1)(a) of the New York State Soil and Water Conservation Districts Law. For the purposes of this section, the soil and water conservation district of New York City shall be considered the equivalent of five districts.*

Section 363.3 Filing of reimbursement request.

(a) Each district, utilizing its annual financial report, shall submit to the committee [headquarters] at [Cornell University, 142 Emerson Hall, Ithaca, N.Y. 14850,] *the department's offices at 10B Airline Drive, Albany, New York 12235 a [verified] detailed and [detailed] verified* claim for reimbursement by [January 31st] *February 15th* in any year for the calendar year immediately preceding.

(b) The district [will] *shall* identify the expenditures in the annual financial report eligible for reimbursement, total them and submit them on a voucher, along with a copy of the annual financial report, to the committee for review and approval. The committee [will] *shall* forward the report and the vouchers [for further processing by the department] *to the department for further processing.*

(c) [The eligible] *Eligible* expenditures [may] include only the items indicated in this section from the "Uniform System of Accounts for Soil and Water Conservation Districts" as last prepared by the Department of Audit and Control, Division of Municipal Affairs, Albany, N.Y. 12225, in 1970, as last amended. The expenditures and the EDP codes, to be used where applicable, are as follows:

(1) 8730.13 [Managers'] *District managers'* personal service and fringe benefits.

(2) 8730.14 Field technicians' personal service and fringe benefits.

(3) 8730.23 Motor vehicle equipment.

(4) 8730.24 Field equipment.

(5) 8730.412 Purchase of maps.

(6) 8730.413 Purchase of flags and stakes.

(7) 8730.431 Travel expenses (district employees).

(8) 8730.460 Total other eligible for reimbursement.

(9) 8730.416 Miscellaneous supplies for use in conservation practices.

(10) 8730.461 Repairs to equipment (field equipment).

(11) 8730.463 Gas and oil for machinery.

(12) 8730.464 Small tools.

Section 363.4 Proration of reimbursement claims if in excess of appropriation.

If the total eligible amounts claimed for reimbursement, as approved by the committee and the department, exceed the appropriation therefor, [we would reimburse] each district *would be reimbursed* a pro rata amount equivalent to the percentage arrived at by dividing the appropriation by the total eligible reimbursement. For example, if there [was] *is* a total of \$120,000 eligible reimbursement expenditures from districts, [but] *and* the appropriation [was] *is* \$80,000, each district would receive two thirds of the amount it would be otherwise eligible for.

Section 363.5 of Title 1 of NYCRR is renumbered section 363.12 and amended; and new sections 363.5, 363.6, 363.7, 363.8, 363.9, 363.10 and 363.11 of Title 1 of NYCRR are added to read as follows:

Section 363.5 Conservation Project Financial Assistance – Baseline.

The State shall provide financial assistance to districts, within amounts available, for up to six thousand dollars annually for the purposes of carrying out projects which conserve, restore and enhance the soil and water resources of the State; assist in the implementation of agricultural best management practices; prevent and reduce agricultural and non-agricultural non-point source water pollution; assist in the control of floods and mitigate flood damage; protect and restore streams and wetlands; protect and restore wildlife and aquatic habitat; assist in the drainage of agricultural lands; prevent impairment of dams and reservoirs; control stormwater run-off, including from construction sites; assist in maintaining the navigability of rivers and harbors; reduce agriculturally generated air pollution; assist the agricultural production of green energy; protect open space; collect and dispose of pesticides; manage public lands; and protect and manage rural and urban forests pursuant to the provisions of section 11-a (1)(b) of the New York State Soil and Water Conservation Districts Law. For the purposes of this funding, the soil and water conservation district of New York City shall be considered the equivalent of five districts.

Section 363.6 Proration of Conservation Financial Assistance – Baseline.

If the total eligible amounts claimed for baseline conservation project financial assistance, as approved by the committee and the department, exceed the appropriation therefor, each district would be awarded a pro rata amount equivalent to the percentage arrived at by dividing the appropriation by the total eligible amount. For example, if the total eligible amount is \$120,000 and the appropriation is \$80,000, each district would receive two thirds of the amount it would be otherwise eligible for.

Section 363.7 Filing Conservation Project Financial Assistance Baseline Request.

Each district, utilizing a form provided by the committee, shall submit to the committee at the department's offices at 10B Airline Drive, Albany, New York 12235, a conservation financial assistance request pursuant to this section by November 1st in any year. The information to be submitted by the district shall include, but not be limited to, a description and a budget for an eligible project(s).

Section 363.8 Performance Based Conservation Financial Assistance.

The State shall provide financial assistance to districts, within available funding, annually and on a competitive basis, for the purposes of carrying out projects for the conservation of the soil and water resources of the State, and for the improvement of water quality, and for the control and prevention of soil erosion and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization and disposal of water, and thereby to preserve natural resources, control and abate nonpoint sources of water pollution, assist in the control of floods, assist in the drainage and irrigation of agricultural lands, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of the State, pursuant to the provisions of section 11-a(1)(c) of the New York State Soil and Water Conservation Districts Law. For the purposes of this section the soil and water conservation district of New York City shall be considered the equivalent of one district.

363.9 Qualifying for Performance Based Conservation Financial Assistance – Standards.

(a) The committee shall establish annually, within funds appropriated, the percentage of the total performance based conservation financial assistance funds available which shall be allocated to each of the performance standards, as described in this section. The funds allocated to each of the performance standards shall be distributed equally to the qualifying districts within each performance standard. In establishing the percentage of funds to be allocated to each performance standard for any year, the committee shall consider the performance of districts under this section, as a whole, in the previous year and the extent to which they have met or failed to meet the following performance standards:

(1) Extent and sufficiency of district board activity, which shall include the number of district board meetings held annually; training of board members and employees; annual audit; establishment and compliance with internal operational policies; and participation at State, regional and national meetings and functions.

(2) District reporting and outreach activities, which shall include presentations, reports, publications, public education and outreach and timely compliance with committee information requests, including an approved annual work plan and an annual report.

(3) Ability of the district to use the funding to leverage additional funds from local, federal and private sources, which shall also include the district's demonstrated ability to foster partnerships with other entities to further natural resource conservation and provide assistance to governmental and non-governmental entities.

(4) Delivery of State natural resource conservation programs, which shall include the quality of service provided (e.g., staff implementing State programs seek and maintain appropriate certifications, job approval authorities and training as established by the committee), completion of projects, and compliance with reporting requirements for such programs.

The committee will, upon the filing of a complete request by a district pursuant to section 363.10, evaluate the district's performance as described in this section. In order to be eligible for Performance Based Conservation Financial Assistance pursuant to sections 363.8 and 363.10 of this Part, a district must certify that it is operating in accordance with all policies adopted by the committee pursuant to section 4 (4)(a) of the New York State Soil and Water Conservation Districts Law and distributed to districts subsequent to the effective date of this rule.

363.10 Filing Performance Based Conservation Financial Assistance Request.

Each district, utilizing a performance measure evaluation sheet provided by the committee, shall submit to the committee headquarters at 10B Airline Drive, Albany, New York 12235, a detailed and verified report by February 15th in any year of the district's performance for the previous calendar year.

363.11 Performance Based Conservation Financial Assistance Report.

Each district, utilizing a form provided by the committee, shall submit to the committee headquarters at 10B Airline Drive, Albany, New York 12235, a report of the eligible activities, as described in section 363.8 of this Part, for which the financial assistance was expended. The report must be submitted by February 15th of the year subsequent to the year in which the financial assistance is provided.

Section 363.12 Limitation of obligation [to make reimbursements] of State aid to soil and water conservation districts. [This Part is effective to the extent that] Funding pursuant to this Part shall be provided only to the extent that there is an appropriation made by the New York State Legislature to the department and the committee for this purpose.

Text of proposed rule and any required statements and analyses may be obtained from: Ronald Kaplewicz, Executive Director, Soil and Water Conservation Committee, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3738

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 4 of the Soil and Water Conservation Districts Law (Law) provides, in part, that the Committee shall have the power to promulgate such rules and regulations as may be necessary for the execution of its functions.

Section 11-a of the Law authorizes the Commissioner of Agriculture and Markets and the Committee to promulgate such rules and regulations for the purpose of providing State aid to districts.

The Department's proposed amendments to Part 363 would further these legislative goals by providing a mechanism for delivering financial assistance to conservation districts including funding based upon performance standards established by the Commissioner of Agriculture and Markets and the State Soil and Water Conservation Committee. 21 NYCRR Part 4400 duplicates the information in 1 NYCRR Part 363 and as such the repeal of 21 NYCRR Part 4400 would have no adverse impact on the regulated parties.

2. Legislative objectives:

Soil and Water Conservation Districts Law § 11-a(3) provides that the Commissioner of Agriculture and Markets and the State Soil and Water Conservation Committee are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem necessary to effectuate the purposes of this section. Soil and Water Conservation Districts Law § 11-a(1)(c) provides, in part, that within amounts available, financial assistance shall be provided to each soil and water conservation district pursuant to this section for the purposes of carrying out projects for the conservation of the soil and water resources of the State, and for the

improvement of water quality, etc., on a competitive basis pursuant to performance standards to be established by the Soil and Water Conservation Committee and the Commissioner of the Department of Agriculture and Markets. The proposed amendments are in accord with the public policy objectives of the Legislature by providing a mechanism for the distribution of such financial assistance.

3. Needs and benefits:

The purpose of the rule is to describe the process for soil and water conservation districts to request additional funding on a competitive basis pursuant to performance standards established by the State Soil and Water Conservation Committee and the Commissioner of the Department of Agriculture and Markets. The rule is necessary to describe the process and performance standards whereby soil and water conservation districts can qualify for additional financial assistance. The benefit of the rule is that it will guide soil and water conservation districts on how to request and qualify for additional financial assistance.

4. Costs:

(a) Costs to regulated parties:

Costs to regulated parties are expected to be limited to the increased indirect costs associated with the districts completing the additional necessary documentation to request additional funding and file final reports. Our estimate of the additional cost is \$480 (16 hrs X \$30 per hour) per year to prepare documentation to comply with the proposed rule.

(b) Costs to the agency, state and local governments: Additional costs to the Department of Agriculture and Markets required for the implementation of and continuing compliance with the rule are estimated at \$5,000 (100 hrs X \$50 per hour) per year. There is not expected to be any other additional costs to the State or local governments.

(c) Source: The source of the information and methodology for which the cost analysis is based is the annual update to rates for Soil and Water Conservation District employees as well as estimates for completing the required forms. Costs are based upon observations of business practices in the industry as well as outreach with regulated parties.

5. Local government mandates:

The proposed rule would impose minor increased administrative burden on the districts in terms of increased annual reporting requirements; however, the increased reporting enables the soil and water conservation districts to obtain additional financial assistance.

6. Paperwork:

Under the proposed amendments, the districts will need to submit the following: Description and budget for eligible projects (on forms to be developed by the State Soil and Water Conservation Committee); Performance Measure Evaluation Sheet (to be developed by the State Soil and Water Conservation Committee); and a report that details the completion of eligible projects supported by these funds.

7. Duplication:

None.

8. Alternatives:

None.

9. Federal standards:

None.

10. Compliance schedule:

Effective date of the Rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendments would impact soil and water conservation districts which are political subdivisions of the State. There are fifty eight (58) soil and water conservation districts in New York State.

2. Compliance requirements:

Under the proposal, soil and water conservation districts would be required to submit documentation to the State Soil and Water Conservation Committee (Committee) which would verify expenditures, eligible activities and projects, and document district performance on forms as prescribed by the Committee and the Commissioner of Agriculture and Markets. The proposed amendments would have no impact upon small business.

3. Professional services:

The soil and water conservation districts would use existing staff to compile and submit reports. The proposed amendments would have no impact upon small business.

4. Compliance costs:

Soil and water conservation districts would not incur any initial capital costs to comply with the proposed rule. There would be minimal administrative costs for soil and water conservation districts to compile and submit

reports. The continuing compliance costs for districts should be minimal and the cost should be similar for all districts.

5. Economic and technological feasibility:

Compliance with the proposed amendments is economically and technologically feasible. The Committee has determined that the soil and water conservation districts are adequately prepared to comply with the new regulation. Soil and water conservation districts currently submit annual reports and workplans to the State Committee. The proposed amendments would have no impact upon small businesses.

6. Minimizing adverse impact:

The proposed amendments would have no impact upon small businesses. The proposed rule will have no adverse economic impact on local governments. Soil and water conservation districts are the only local governments impacted by this proposed rule, which provides a mechanism to provide districts with additional funding. The reporting requirements under the existing Part 363 will not change for those funds (reimbursement funds) that have been traditionally provided to soil and water conservation districts. Reimbursement reporting requires districts to identify eligible expenditures, by cost category, and to file financial and annual activity reports. There would be minimal administrative costs for the soil and water conservation districts to request the additional funds and compile and submit reports. In conformance with State Administrative Procedure Act section 202-b(1), the proposal was drafted to minimize economic impact and reporting requirements for the regulated parties, soil and water conservation districts.

7. Small business and local government participation:

The Committee has been in contact with regulated parties, which includes conservation districts and their governing boards of directors, in an effort to develop a mechanism to deliver additional State aid to the districts. Out-reach to the regulated parties has included: the development of the proposed rule included a working group comprised of State agencies and representatives of the regulated community. The working group was comprised of representatives of the following agencies and organizations: USDA Natural Resources Conservation Service; NYS Department of Agriculture and Markets; NYS Soil and Water Conservation Committee; NYS Department of Environmental Conservation; NY Association of Conservation Districts; NY Farm Bureau; NY Conservation Districts Employees Association Inc.; and various representatives from county soil and water conservation districts.

The draft rule was circulated and discussed at a number of official forums associated with the regulated parties including the Annual Meeting of the New York Association of Conservation Districts (October 30, 2006), Regional District Managers meetings (November 9, 2006, December 7, 2006, January 18, 2007, and February 15, 2007), New York Conservation District Employees Association Board meetings (November 14, 2006, and January 31, 2007), New York State Soil and Water Conservation Committee monthly meetings (September 19, 2006, October 31, 2006, December 19, 2006, January 16, 2007, and February 20, 2007) and meetings of several individual soil and water conservation district boards. The draft rule was distributed statewide to affected parties, state agencies and advisory groups on October 27, 2006 and again on February 17, 2007.

Since the proposal would have no impact on small businesses, there has been no outreach with small businesses.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are 62 New York State Counties that have established soil and water conservation districts. The 5 boroughs of New York City are considered one soil and water conservation district, thus, 58 soil and water conservation districts legally exist in New York. Districts are coterminous with county boundaries. Every county in the state will be impacted, the predominance of which are rural.

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

Under the proposal, soil and water conservation districts would be required to submit documentation to the State Soil and Water Conservation Committee (Committee) which would verify expenditures, eligible activities and projects, and document district performance on forms as prescribed by the Committee and the Commissioner of Agriculture and Markets. Districts could use existing staff and would not need to retain or hire additional professional services to meet the recordkeeping requirements.

3. Costs:

There will be no initial capital costs to comply with the proposed amendments; annual costs will be limited to those indirect costs associated with completing the necessary documentation. The proposed amendments will only impact soil and water conservation districts so there will not be

any variation in costs for different types of public and private entities in rural areas.

4. Minimizing adverse impact:

In conformance with the State Administrative Procedure Act section 202-bb(2), the proposed amendments were drafted to minimize adverse impacts on districts, including reporting. Reporting requirements under the existing Part 363 will not change for reimbursement funds that have been traditionally provided to soil and water conservation districts. Reimbursement reporting requires districts to identify eligible expenditures, by cost category, and to file financial and annual activity reports.

5. Rural area participation:

Committee staff has been in contact with regulated parties, which includes soil and water conservation districts and their governing boards of directors. Most conservation districts are located in predominantly rural areas. The development of the proposed rule included a working group comprised of State agencies and representatives of the regulated community. The working group was comprised of representatives of the following agencies and organizations: USDA Natural Resources Conservation Service; NYS Department of Agriculture and Markets; NYS Soil and Water Conservation Committee; NYS Department of Environmental Conservation; NY Association of Conservation Districts; NY Farm Bureau; NY Conservation Districts Employees Association Inc.; and various representatives from county soil and water conservation districts.

The draft rule was circulated and discussed at a number of official forums associated with the regulated parties including the Annual Meeting of the New York Association of Conservation Districts (October 30, 2006), Regional District Managers meetings (November 9, 2006, December 7, 2006, January 18, 2007, and February 15, 2007), New York Conservation District Employees Association Board meetings (November 14, 2006, and January 31, 2007), New York State Soil and Water Conservation Committee monthly meetings (September 19, 2006, October 31, 2006, December 19, 2006, January 16, 2007, and February 20, 2007) and meetings of several individual soil and water conservation district boards. The draft rule was distributed statewide to affected parties, state agencies and advisory groups on October 27, 2006 and again on February 17, 2007.

Job Impact Statement

1. Nature of impact:

The proposed amendments will result in increased funding for soil and water conservation districts and provide an opportunity for increased staff.

2. Categories and numbers affected:

The increased funding for districts could result in the addition of new soil and water conservation district employees. These jobs would be in the following areas: soil and water conservation district management, administration and technical delivery. The numbers of jobs or employment opportunities affected in each category is unknown.

3. Regions of adverse impact:

There is no known adverse impact on employment in New York from these proposed amendments.

4. Minimizing adverse impact:

There is no known adverse impact on employment in New York from these proposed amendments. The proposed amendments promote the development of new employment opportunities.

5. Self-employment opportunities:

This rule will have no measurable impact on self-employment opportunities.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by increasing the number of positions of Special Assistant from 2 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) 457-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@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.

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

Jurisdictional Classification

I.D. No. CVS-29-07-00004-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 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by deleting therefrom the positions of Confidential Secretary and Secretary (in the State Athletic Commission) and by increasing the number of positions of Secretary from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

Jurisdictional Classification

I.D. No. CVS-29-07-00005-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the

Department of Civil Service

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

Jurisdictional Classification

I.D. No. CVS-29-07-00003-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(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Department of Correctional Services, by increasing the number of positions of Inmate Disciplinary Hearing Officer from 10 to 11.

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) 457-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@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

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

Jurisdictional Classification

I.D. No. CVS-29-07-00006-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the position of Director, Procurement Services Group (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@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

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

Jurisdictional Classification

I.D. No. CVS-29-07-00007-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Director, Parks and Recreation, Western District (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State

Campus, Albany, NY 12239, (518) 457-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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Jurisdictional Classification

I.D. No. CVS-29-07-00008-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by increasing the number of positions of Quality Care Facility Review Specialist 1 from 27 to 28 and Quality Care Facility Review Specialist 2 from 10 to 11.

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) 457-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

Jurisdictional Classification

I.D. No. CVS-29-07-00009-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the State University of New York.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "SUNY at Stony Brook," by adding thereto the positions of Recycling Specialist (3) and Recycling Supervisor (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, State Cam-

pus, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@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.

Education Department

EMERGENCY RULE MAKING

Students with Limited English Proficiency

I.D. No. EDU-26-07-00008-E

Filing No. 654

Filing date: June 29, 2007

Effective date: June 29, 2007

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

Action taken: Amendment of Part 154 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 215, 2117(1), 3204(2), (2-a), (3) and (6) and L. 2007, ch. 57, section 10

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary for the Department to come into compliance with Chapter 57 of the Laws of 2007. Changes to the Education Law related to the education of pupils with limited English proficiency, as enacted under Chapter 57 of the Laws of 2007, are no longer in line with the current Part 154 regulations. Current Part 154 regulations prescribe requirements for school districts claiming State limited English proficiency aid as well as for districts not claiming State limited English proficiency aid for the education of pupils with limited English proficiency. Under Chapter 57 of the Laws of 2007, schools will no longer claim State limited English proficiency aid. Beginning in 2007-2008, all districts will receive total foundation aid.

Furthermore, Education Law section 3204(2-a)(1), as amended by section 10 of Chapter 57 of the Laws of 2007, requires each school district which is receiving total foundation aid to develop a comprehensive plan consistent with requirements as the Commissioner may establish in regulations to meet the educational needs of pupils of limited English proficiency. Such plan shall include a description of the programs, activities and services used to meet the educational needs of such pupils that comply with the regulations of the Commissioner governing such programs.

Consistent with Education Law section 3204(2-a)(1), as amended by section 10 of Chapter 57 of the Laws of 2007, the proposed amendment will require school districts receiving total foundation aid to develop a comprehensive plan for the education of students with limited English proficiency. Each school district receiving total foundation aid must develop a comprehensive plan consistent with Education Law section 3204(2-a)(1) and Part 154 of the Commissioner's Regulations, commencing with the 2007-2008 school year. As a result, it is critically important to expedite the submission and approval of the proposed amendment.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to immediately establish requirements for the development of comprehensive plans for students with limited English proficiency by school districts pursuant to Education Law section 3204, as amended by Chapter 57 of the Laws of 2007, and to otherwise conform Part 154 of the Commissioner's Regulations to the statute, so that school districts may timely prepare and implement such plans pursuant to statutory requirements for the 2007-2008 school year.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 10-11, 2007 meeting, which is the first scheduled Regents meeting after expiration of

the 45-day public comment period prescribed by the State Administrative Procedure Act.

Subject: Students with limited English proficiency.

Purpose: To prescribe requirements for the development of comprehensive plans for students with limited English proficiency by school districts pursuant to Education Law section 3024, as amended by chapter 57 of the Laws of 2007, and to otherwise conform Part 154 of the commissioner's regulations to the statute.

Text of emergency rule: 1. The title of Part 154 of the Regulations of the Commissioner of Education is amended, effective June 29, 2007, as follows:

Part 154

[APPORTIONMENT AND] SERVICES FOR PUPILS WITH LIMITED ENGLISH PROFICIENCY

2. Paragraph (1) of subdivision (d) of section 154.2 of the Regulations of the Commissioner of Education is amended, effective June 29, 2007, as follows:

(1) The language arts instructional component shall include English language arts instruction and English as a second language instruction. The learning standards for English language arts (ELA) and English as a second language (ESL), and key ideas and performance indicators for such standards, shall serve as the basis for the [(ELA)] ELA and ESL curriculums, respectively.

(i) . . .

(ii) . . .

3. Section 154.3 of the Regulations of the Commissioner of Education is repealed, effective June 29, 2007.

4. A new section 154.3 of the Regulations of the Commissioner of Education is added, effective June 29, 2007, as follows:

154.3 School District Responsibility.

The provisions of this section shall apply to programs operated in the 2007-08 school year and thereafter. All limited English proficient students shall be entitled to receive services in accordance with subdivision 2 and 2(a) of section 3204 of the Education Law.

(a) *Each school district receiving total foundation aid, including each community school district of the city of New York, shall develop a comprehensive plan to meet the educational needs of pupils with limited English proficiency. Such plan shall be kept on file in the district and made available for department review upon request of the department. The plan shall include:*

(1) *the district's philosophy for the education of such pupils;*

(2) *administrative practices and procedures to:*

(i) *diagnostically screen pupils for limited English proficiency pursuant to Part 117 of this Title;*

(ii) *identify such pupils with limited English proficiency;*

(iii) *annually evaluate each such pupil including each such pupil's performance in content areas to measure the pupil's academic progress.*

(3) *a description of the nature and scope of the bilingual and/or English as a second language instructional program and services available to limited English proficient pupils;*

(4) *a description of the criteria used by the district to place limited English proficient pupils in appropriate bilingual or free-standing English as a second language programs;*

(5) *a description by building of the curricular and extracurricular services provided to pupils with limited English proficiency;*

(6) *a description of the district and school level procedures for the management of the program, including staffing, site selection, parental notification, coordination of funds, training and program planning;*

(b) *School related information shall be distributed to parents or other persons in parental relationship to pupils with limited English proficiency in English or when necessary the language they understand;*

(c) *The school district shall submit to the commissioner the results of the annual evaluation of limited English proficient pupils, including test data and any additional data required by the commissioner, in the format and timeframe specified by the commissioner;*

(d) *The school district shall ensure that the provisions of section 3204 of the Education Law with respect to the instruction of limited English proficient pupils are adhered to.*

(e) *The school district shall refer limited English proficient pupils who are suspected of having a disability to the committee on special education in accordance with Part 200 of this Title and assure that a bilingual multidisciplinary assessment is conducted in accordance with section 200.4(b) of this Title before the committee identifies pupils with limited English proficiency as having a disability.*

(f) The school district shall submit to the commissioner the following documents in a form and by a date specified by the commissioner:

(1) an assurance:

(i) of access to appropriate instructional and support services for such pupils, including guidance programs pursuant to section 100.2(j) of this Title;

(ii) that each such pupil has equal opportunities to participate in all school programs and extracurricular activities as non-limited English proficient pupils;

(iii) that the minimum ESL and ELA requirements prescribed in section 154.2(d) of this Part for the freestanding ESL programs are adhered to;

(iv) that the minimum ESL, ELA and NLA requirements prescribed in section 154.2(e) of this Part for bilingual education programs are adhered to;

(v) that teachers in the district's free-standing ESL and bilingual education programs are appropriately certified pursuant to Part 80 of this Title;

(vi) the district will comply with the requirements of this Part and the provisions of the Education Law governing programs for pupils with limited English proficiency;

(vii) that programs for limited English proficient pupils will be administered in accordance with applicable federal and state law and regulations and the district's comprehensive plan;

(2) a report by building of the number of pupils identified as being limited English proficient in the preceding year, including their grade level, native language and instructional program;

(3) a report by building of the number of limited English proficient pupils served in the preceding year, including their grade level, native language and instructional program;

(4) a report by building of the number of pupils that took the NYSES-LAT in the preceding school year;

(5) a report by building of the number and qualifications of teachers and support personnel providing services to pupils with limited English proficiency;

(6) a fiscal report containing such data concerning the preceding school year as may be required by the commissioner; and

(7) beginning in July 2008 and annually thereafter, a report on the expenditure of state, local and federal funds in the prior year on programs, activities and services for pupils with limited English proficiency.

(g) Types of programs.

(1) **Bilingual Education Program.** Each school district which has an enrollment of 20 or more pupils with limited English proficiency of the same grade level assigned to a building, all of whom have the same native language which is other than English, shall provide such pupils with bilingual education programs.

(2) **Free-standing English as a Second Language Program.** Each school district which has pupils with limited English proficiency of the same grade level assigned to a building, but which does not have 20 of such pupils with the same native language which is other than English, shall provide either a free-standing English as a second language program, or a bilingual education program to such pupils.

(h) **Support services.** Each school district with limited English proficient pupils participating in bilingual or free-standing English as a second language programs shall provide appropriate support services needed by such pupils to achieve and maintain a satisfactory level of academic performance. Such services may include, but need not be limited to, individual counseling, group counseling, home visits, and parental counseling. Where appropriate, such services shall be provided in the first language of the pupil and the pupil's parents or other persons in parental relation to the pupil.

(i) **Transitional services.** Each school district shall ensure a transition for former limited English proficient pupils transferring from a bilingual or free-standing English as a second language program into an English mainstream program. Transitional services shall be provided for the first year after the pupil is placed in the English mainstream instructional program.

(j) **In-service training.** Each school district with limited English proficient pupils shall provide in-service training to all personnel providing instruction or other services to such pupils in order to enhance their appreciation for the pupils' native languages and cultures and their ability to provide appropriate instructional and support services.

(k) **Parental notification.** (1) The parents or other persons in a parental relation to a pupil designated as limited English proficient shall be notified, in English and the language they understand, of their child's

placement in an instructional bilingual or free-standing English as a second language program and their options as set forth in paragraphs (2) and (3) of this subdivision. School districts offering programs to limited English proficient pupils shall make an effort to meet with the parents or other persons in parental relation to such pupils, at least twice a year, to help them understand the goals of the program and how they might help their children.

(2) The parents or other persons in parental relation to a pupil designated as limited English proficient shall have the option to withdraw their child only from participation in an instructional bilingual education program, provided that:

(i) the parents or other persons in parental relation to a pupil designated as limited English proficient meet with the school principal along with the school or district supervisor of bilingual education to discuss and explain further the nature, purposes, educational values of the program and the skills required of personnel;

(ii) as a minimum such pupil shall participate in a free-standing English as a second language program.

(3) In a school building where the number of eligible pupils does not require the offering of a bilingual education program, parents or other persons in parental relation to a pupil identified as limited English proficient shall have the option of transferring their child to a school within the district provided such program is available at such other school. A parent who chooses not to exercise the transfer option shall be informed that his or her child shall participate in a free-standing English as a second language program.

(4) Parents or other persons in parental relation to a pupil designated as limited English proficient who is a new entrant, as defined in section 117.2 (d) of this Title, shall be provided an orientation session on the state standards, assessments, school expectations and general program requirements for the bilingual education program and the free-standing English as a second language program. Such orientation shall take place within the first semester of their child's enrollment in the school and, when needed, shall be provided in the first language of the pupil's parents or other persons in parental relation to the pupil.

(l) A pupil whose score on the LAB-R or the NYSESLAT, as specified in section 154.2(a), (b) and (c) of this Part, is a result of a disability shall be provided special education programs and services in accordance with the individualized education program (IEP) developed for such pupil pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this Part when such services are recommended in the IEP. A pupil with a disability receiving services in accordance with the provisions of this section shall be counted as a pupil with limited English proficiency, as well as a student with a disability, for purposes of calculating State aid pursuant to section 3602 of the Education Law.

5. Section 154.4 of the Regulations of the Commissioner of Education is repealed, effective June 29, 2007.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-26-07-00008-P, Issue of June 27, 2007. The emergency rule will expire September 26, 2007.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 215 authorizes the Board of Regents and the Commissioner of Education to require school districts to prepare and submit reports containing such information as they may prescribe.

Education Law section 2117(1) empowers the Board of Regents and the Commissioner of Education to require school districts to submit any information they deem appropriate.

Education Law section 3204(2) and (2-a) provide for instructional programs for pupils with limited English proficiency to be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) authorizes the Commissioner to establish standards for the instruction of children with limited English proficiency, and section 3204(6) requires the Commissioner to establish such standards by regulation.

Education Law section 3204(2-a)(1), as amended by section 10 of Chapter 57 of the Laws of 2007, requires each school district which is receiving total foundation aid to develop a comprehensive plan consistent with requirements as the Commissioner may establish in regulations to meet the educational needs of pupils of limited English proficiency. Such plan shall include a description of the programs, activities and services used to meet the educational needs of such pupils that comply with the regulations of the Commissioner governing such programs.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement Education Law section 3204(2-a)(1), as amended by section 10 of Chapter 57 of the Laws of 2007.

NEEDS AND BENEFITS:

The proposed amendment is necessary to comply with the requirements of section 10 of Chapter 57 of the Laws of 2007. Changes to the Education Law related to the education of pupils with limited English proficiency, as enacted under Chapter 57 of the Laws of 2007, are no longer in line with the current Part 154 regulations. Current Part 154 regulations prescribe requirements for districts claiming state limited English proficiency aid as well as for districts not claiming state limited English proficiency aid for the education of pupils with limited English proficiency. Pursuant to Chapter 57 of the Laws of 2007, school districts will no longer claim State limited English proficiency aid. Beginning in 2007-08, all districts will receive total foundation aid. Each school district that receives total foundation aid must develop a comprehensive plan consistent with Education Law section 3204(2-a)(1) and Part 154 of the Commissioner's Regulations.

COSTS:

(a) Costs to State government: None.

(b) Cost to local government: It is anticipated that any costs to school districts would be minimal and will be absorbed using existing staff and resources, and/or State funded technical assistance resources.

(c) Cost to private regulated parties: None.

(d) Cost to regulating agency: It is anticipated that the Statewide cost associated with the training and submission of required documents will be minimal and will be covered through State and federal funds.

For the 2008-2009 school year and thereafter, it is expected that costs associated with the development of the comprehensive plans will decrease since some of the activities were only carried out initially during the training phases and development of the initial plan.

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform Part 154 of the Regulations of the Commissioner of Education to Education Law section 3204(2-a), as amended by Chapter 57 of the Laws of 2007.

Section 154.3 prescribes the specific requirements for school districts receiving total foundation aid. The amendment requires that each school district receiving foundation aid:

(1) develop a comprehensive plan. The plan must include the district's philosophy for the education of pupils with limited English proficiency (LEP) and the administrative practices and procedures to screen, identify and annually evaluate LEP pupils. The plan must also include a description of the bilingual or English as a Second Language (ESL) program to be implemented, the criteria for placement in such programs, the types of curricular and extracurricular activities and the program management procedures;

(2) distribute school related information to parents in the language that they understand;

(3) submit assessment data to the Department as prescribed by the Commissioner;

(4) refer students suspected of having a disability to the Committee on Special Education;

(5) submit a signed statement of assurances certifying that pupils with limited English proficiency will have access and equal opportunities to participate in appropriate instructional programs, extracurricular activities and support services; that such pupils will be provided the minimum language arts requirements prescribed under Part 154 of the Commissioner's Regulations; that teachers in free-standing and bilingual education programs are appropriately certified; and that programs for pupils with limited English proficiency will be administered in accordance with applicable statutes, regulations and the district's plan;

(6) submit a report by building of the number of students identified, served and who took the New York State English as a Second Language Achievement Test;

(7) submit a report of the number of teachers and their qualifications;

(8) beginning in July 2008 and annually thereafter, submit a report of the expenditures of State, local and federal funds in the prior year for programs and activities for pupils with limited English proficiency.

PAPERWORK:

Each school district receiving total foundation aid shall develop a comprehensive plan for the education of pupils with limited English proficiency. Such plan shall be kept on file in the district and made available for Department review upon request of the Department. The plan shall include:

(1) the district's philosophy for the education of such pupils;

(2) administrative practices and procedures to:

(i) diagnostically screen pupils for limited English proficiency pursuant to Part 117 of this Title;

(ii) identify such pupils with limited English proficiency;

(iii) annually evaluate each such pupil including each such pupil's performance in content areas to measure the pupil's academic progress.

(3) a description of the nature and scope of the bilingual and/or English as a second language instructional program and services available to limited English proficient pupils;

(4) a description of the criteria used by the district to place limited English proficient pupils in appropriate bilingual or free-standing English as a second language programs;

(5) a description by building of the curricular and extracurricular services provided to pupils with limited English proficiency; and

(6) a description of the district and school level procedures for the management of the program, including staffing, site selection, parental notification, coordination of funds, training and program planning.

The school district shall submit to the Commissioner the results of the annual evaluation of limited English proficient pupils, including test data and any additional data required by the Commissioner, in the format and timeframe specified by the Commissioner.

The school district shall submit to the Commissioner the following documents in a form and by a date specified by the Commissioner:

(1) an assurance:

(i) of access to appropriate instructional and support services for such pupils, including guidance programs pursuant to section 100.2(j) of the Commissioner's Regulations;

(ii) that each pupil has equal opportunities to participate in all school programs and extracurricular activities as non-limited English proficient pupils;

(iii) that the minimum ESL and ELA requirements prescribed in section 154.2(d) of the Commissioner's Regulations for the freestanding ESL programs are adhered to;

(iv) that the minimum ESL, ELA and NLA requirements prescribed in section 154.2(e) of this Part for bilingual education programs are adhered to;

(v) that teachers in the district's free-standing ESL and bilingual education programs are appropriately certified pursuant to Part 80 of the Commissioner's Regulations;

(vi) that the district will comply with the requirements of Part 154 and the provisions of the Education Law governing programs for pupils with limited English proficiency;

(vii) that programs for limited English proficient pupils will be administered in accordance with applicable federal and state law and regulations and the district's comprehensive plan;

(2) a report by building of the number of pupils identified as being limited English proficient in the preceding year, including their grade level, native language and instructional program;

(3) a report by building of the number of limited English proficient pupils served in the preceding year, including their grade level, native language and instructional program;

(4) a report by building of the number of pupils that took the NYSESLAT in the preceding school year;

(5) a report by building of the number and qualifications of teachers and support personnel providing services to pupils with limited English proficiency;

(6) a fiscal report containing such data concerning the preceding school year as may be required by the Commissioner; and

(7) beginning in July 2008 and annually thereafter, a report on the expenditure of state, local and federal funds in the prior year on programs, activities and services for pupils with limited English proficiency.

DUPLICATION:

The proposed amendment will not duplicate or exceed any other existing federal or State statute or regulation.

ALTERNATIVES:

The proposed amendment is necessary to comply with the requirements of Education Law section 3204(2-a), as amended by section 10 of Chapter 57 of the Laws of 2007. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment does not exceed any federal rule in a similar area.

COMPLIANCE STANDARD:

The proposed amendment provides that the new requirements for the development of the comprehensive plan be fully implemented by the 2007-2008 school year.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to the establishment of revised requirements for the development of comprehensive plans for pupils with limited English proficiency by school districts receiving total foundation aid. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to all school districts in the State that receive total foundation aid.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform Part 154 of the Regulations of the Commissioner of Education to Education Law section 3204(2-a), as amended by Chapter 57 of the Laws of 2007.

Section 154.3 prescribes the specific requirements for school districts receiving total foundation aid. The amendment requires that each school district receiving foundation aid:

(1) develop a comprehensive plan. The plan must include the district's philosophy for the education of pupils with limited English proficiency (LEP) and the administrative practices and procedures to screen, identify and annually evaluate LEP pupils. The plan must also include a description of the bilingual or English as a Second Language (ESL) program to be implemented, the criteria for placement in such programs, the types of curricular and extracurricular activities and the program management procedures;

(2) distribute school related information to parents in the language that they understand;

(3) submit assessment data to the Department as prescribed by the Commissioner;

(4) refer students suspected of having a disability to the Committee on Special Education;

(5) submit a signed statement of assurances certifying that pupils with limited English proficiency will have access and equal opportunities to participate in appropriate instructional programs, extracurricular activities and support services; that such students will be provided the minimum language arts requirements prescribed under Part 154 of the Commissioner's Regulations; that teachers in free-standing and bilingual education programs are appropriately certified; and that programs for pupils with limited English proficiency will be administered in accordance with applicable statutes, regulations and the district's plan;

(6) submit a report by building of the number of students identified, served and who took the New York State English as a Second Language Achievement Test;

(7) submit a report of the number of teachers and their qualifications;

(8) beginning in July 2008 and annually thereafter, submit a report of the expenditures of State, local and federal funds in the prior year for programs and activities for pupils with limited English proficiency.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

It is anticipated that any costs to school districts would be minimal and will be absorbed using existing staff and resources, and/or State funded technical assistance resources.

It is further anticipated that the Statewide cost associated with the training of required documents will be minimal and will be covered through State and federal funds. For the 2008-2009 school year and thereafter, it is expected that costs associated with the development of the comprehensive plans will decrease since some of the activities were only

carried out initially during the training phases and development of the initial plan.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on school districts. Economic feasibility is addressed above under compliance costs.

MINIMIZE ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 3204(2-a), as amended by Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing requirements or to exempt school districts and eligible agencies from coverage by the rule. Nevertheless, in establishing the uniform provisions necessary to conform Part 154 of the Commissioner's Regulations to the statute, the Department has considered a variety of options and selected those approaches that will achieve the goal of increased program quality while minimizing additional costs and compliance requirements upon school districts. Since school districts are directly responsible for the instruction of LEP pupils, it is not feasible to apply any of the approaches for minimizing adverse economic impacts pursuant to State Administrative Procedure Act section 202-b(1).

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule will be solicited from school districts through the offices of the district superintendents of each supervisory district in the State. The proposed amendment will also be posted on the Department's New York State Bilingual Education (NYSBEN) web site to facilitate a wide distribution. Additionally, the proposed amendment will be shared with the Department's Committee of Practitioners on the Education of English Language Learners, the regional Bilingual Education Technical Assistance Centers and selected professional organizations.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment is necessary to conform Part 154 of the Regulations of the Commissioner of Education to Education Law section 3204(2-a), as amended by Chapter 57 of the Laws of 2007.

Section 154.3 prescribes the specific requirements for school districts receiving total foundation aid. The amendment requires that each school district receiving foundation aid:

(1) develop a comprehensive plan. The plan must include the district's philosophy for the education of pupils with limited English proficiency (LEP) and the administrative practices and procedures to screen, identify and annually evaluate LEP pupils. The plan must also include a description of the bilingual or English as a Second Language (ESL) program to be implemented, the criteria for placement in such programs, the types of curricular and extracurricular activities and the program management procedures;

(2) distribute school related information to parents in the language that they understand;

(3) submit assessment data to the Department as prescribed by the Commissioner;

(4) refer students suspected of having a disability to the Committee on Special Education;

(5) submit a signed statement of assurances certifying that pupils with limited English proficiency will have access and equal opportunities to participate in appropriate instructional programs, extracurricular activities and support services; that such students will be provided the minimum language arts requirements prescribed under Part 154 of the Commissioner's Regulations; that teachers in free-standing and bilingual education programs are appropriately certified; and that programs for pupils with limited English proficiency will be administered in accordance with applicable statutes, regulations and the district's plan;

(6) submit a report by building of the number of students identified, served and who took the New York State English as a Second Language Achievement Test;

(7) submit a report of the number of teachers and their qualifications;

(8) submit a report of the expenditures of State, local and federal funds in the prior year for programs and activities for pupils with limited English proficiency.

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

COMPLIANCE COSTS:

It is anticipated that any costs to school districts will be minimal and will be absorbed using existing staff and resources, and/or State funded technical assistance resources.

It is further anticipated that the Statewide cost associated with the training of required documents will be minimal and will be covered through State and federal funds. For the 2008-2009 school year and thereafter, it is expected that costs associated with the development of the comprehensive plans will decrease since some of the activities were only carried out initially during the training phases and development of the initial plan.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 3204(2-a), as amended by Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing requirements or to exempt school districts and eligible agencies from coverage by the rule. Nevertheless, in establishing the uniform provisions necessary to conform Part 154 of the Commissioner's Regulations to the statute, the Department has considered a variety of options and selected those approaches that will achieve the goal of increased program quality while minimizing additional costs and compliance requirements upon school districts. Because this amendment implements statutory provisions that are applicable to school districts across the State, it was not possible to provide for a lesser standard or an exemption for school districts in rural areas.

RURAL AREA PARTICIPATION:

The proposed amendment will be sent for review and comment to members of the Department's Rural Advisory Committee, which includes representatives from rural areas. The proposed amendment will also be posted on the Department's New York State Bilingual Education (NYS-BEN) web site to facilitate a wide distribution. Additionally, the proposed amendment will be shared with the Department's Committee of Practitioners on the Education of English Language Learners, the regional Bilingual Education and Technical Assistance Centers and selected professional organizations.

Job Impact Statement

The proposed amendment relates to the establishment of revised requirements for the development of comprehensive plans for pupils with limited English proficiency by school districts receiving total foundation aid, and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

State Aid Awards

I.D. No. EDU-26-07-00009-E

Filing No. 653

Filing date: June 29, 2007

Effective date: July 1, 2007

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

Action taken: Amendment of section 150.2 and addition of section 150.4 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 6401-a and L. 2007, ch. 57

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

Specific reasons underlying the finding of necessity: Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, becomes effective on July 1, 2007. This section authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs. In order to implement the requirements of section 6401-a of the Education Law, the proposed amendment is needed to establish the eligibility criteria for such awards, the application process and the reporting requirements for independent colleges and universities that wish to apply for State aid for high needs nursing programs under this section.

Emergency action is necessary for the preservation of the general welfare to permit the implementation of the new statutory requirements by

July 1, 2007, the effective date of Section 6401-a of the Education Law; thereby permitting eligible independent colleges and universities to apply for state aid in a timely manner for the 2007-2008 academic year.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at the September 2007 Regents Meeting.

Subject: State aid awards for high needs nursing programs at certain independent colleges and universities.

Purpose: To set forth the eligibility criteria and the requirements and procedures for certain eligible independent colleges and universities to follow when applying for, or awarding, State aid awards for high needs nursing programs in order to implement the requirements of chapter 57 of the Laws of 2007.

Text of emergency rule: 1. Section 150.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2007, as follows:

No portion of any State aid paid to an institution of higher education pursuant to the provisions of [section] sections 6401 and 6401-a of the Education Law shall be used for the religious instruction or religious worship or for the advancement or inhibition of religion.

2. Section 150.4 of the Regulations of the Commissioner of Education is added, effective July 1, 2007, as follows:

§ 150.4 State aid for high needs nursing program.

(a) Purpose. The purpose of this section is to establish the eligibility criteria and requirements for certain independent colleges and universities applying for State aid awards for high needs nursing programs pursuant to section 6401-a of the Education Law.

(b) Definitions. For purposes of this section:

(1) Enrolled shall mean that a student is registered full-time in the fall semester at an eligible institution in an associate or baccalaureate degree program in nursing that is registered by the department pursuant to section 52.12 of this Title;

(2) Eligible institution shall mean a higher education institution that meets the following requirements:

(i) the institution shall be a non-profit or independent college or university incorporated by the Regents or the Legislature that is geographically located in New York State;

(ii) the institution shall maintain an earned nursing degree program registered by the department, culminating in an associate degree or higher, excluding any online nursing degree program offered via the internet;

(iii) the institution shall meet such standards of educational quality applicable to comparable public institutions of higher education, as may be from time to time established by the Regents; and

(iv) the institution shall meet the requirements for State aid under the constitutions of the United States and the State of New York.

(3) Fall semester means that part of the academic year that begins between late August and November 1.

(4) Department shall mean the New York State Education Department.

(5) Full-time student shall mean a student that is enrolled at an eligible institution in full-time study, as defined in section 145-2.1 of this Title.

(6) High needs nursing program shall mean any nursing program registered by the department pursuant to section 52.12 of this Title at an eligible institution as defined in this section, and shall not include online or internet nursing degree programs.

(c) Application. Eligible institutions that wish to apply for State aid pursuant to section 6401-a of the Education Law shall submit an application to the commissioner by September 15 of the academic year in which they are seeking State aid, on a form prescribed by the commissioner.

(d) Awards.

(1) The commissioner shall grant State aid awards to each eligible institution within the amounts appropriated for such purpose, not to exceed one million dollars and based on the availability of funds. Such awards shall be computed by multiplying an amount not to exceed two hundred fifty dollars for each student enrolled in a high needs nursing program at an eligible two year degree institution and an amount not to exceed five hundred dollars for each student enrolled in a high needs nursing program at an eligible four year degree institution in the fall semester preceding the annual period for which such an apportionment is made.

(2) For purposes of this section, an eligible two year degree institution which has received authority to confer baccalaureate degrees shall continue to be considered an eligible two year degree institution until such time as it has actually begun to confer baccalaureate degrees.

(3) In the case of a jointly registered nursing degree program at more than one eligible institution, the eligible institution granting the degree shall receive the State aid award under this section.

(4) In the event that the appropriation cannot fully fund such awards, the commissioner will appropriate the monies to each eligible institution proportionately based on the amount of available funds and pursuant to a schedule determined by the commissioner.

(e) Institutional reports. Beginning July 1, 2007, each eligible institution applying for State aid pursuant to section 6401-a of the Education Law shall submit an annual certification by their chief executive officer to the commissioner by November 15 of each year, certifying the number of students enrolled in a high needs nursing program at such institution for the fall semester and any other information the commissioner may require, in a form prescribed by the commissioner.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-26-07-00009-P, Issue of June 27, 2007. The emergency rule will expire September 26, 2007.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent colleges and universities and to promulgate any regulations necessary to implement the requirements of this section.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives set forth in the aforementioned statutes in that it establishes the eligibility criteria and the requirements and procedures certain independent colleges and universities and the Commissioner of Education must follow when applying for, or awarding state aid for high needs nursing programs, in order to implement the requirements of Chapter 57 of the Laws of 2007.

3. NEEDS AND BENEFITS:

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State. In order to conform with the new requirements set forth in section 6401-a of the Education Law, the proposed amendment establishes eligibility criteria and the requirements and procedures for certain eligible institutions and the Commissioner of Education to follow when applying for, and awarding, state aid under this section. Specifically, the amendment makes the following changes:

The amendment authorizes the Commissioner of Education to grant State aid awards to each eligible institution within the amounts appropriated for such purpose, not to exceed one million dollars and based on the availability of funds. In the event that the appropriation cannot fully fund such awards, the proposed amendment allows the Commissioner to appropriate the monies to each eligible institution proportionately based on available funds and pursuant to a schedule determined by the Commissioner.

The awards are computed by multiplying an amount not to exceed two hundred fifty dollars for each full-time student enrolled in a high needs nursing program at an eligible two year degree institution and an amount not to exceed five hundred dollars for each full-time student enrolled in a high needs nursing program at an eligible four year degree institution in the fall semester preceding the annual period for which such an appropriation is made.

This amendment defines an eligible institution as a higher education institution that meets the following requirements: (1) the institution must be a non-profit or independent college or university incorporated by the Regents or the Legislature that is geographically located in New York State; (2) the institution must maintain an earned nursing degree program registered by the department, culminating in an associate degree or higher, excluding any online nursing degree program offered via the internet; (iii) the institution must meet such standards of educational quality applicable to comparable public institutions of higher education, as may be from time to time established by the Regents; and (iv) the institution must meet the

requirements for State aid under the constitutions of the United States and the State of New York. The amendment also defines high needs nursing program as any nursing program registered by the department at an eligible institution and shall not include online or internet nursing degree programs.

The proposed amendment requires each eligible institution that wishes to apply for State aid pursuant to this section to apply to the Commissioner by September 15 of the academic year in which they are seeking State aid. It also requires each eligible institution applying for State aid under this section to submit a certification by their chief executive officer to the Commissioner, by November 15 of each year, certifying the number of full-time students enrolled in a high needs nursing program at such institution in the fall semester.

The proposed amendment clarifies that an eligible two year degree institution which has received authority to confer bachelor degrees shall continue to be considered an eligible two year degree institution until such time as it has actually begun to confer bachelors' degrees. Also, in the case of a jointly registered nursing degree program at more than one eligible institution, the proposed amendment clarifies that the eligible institution granting the degree shall receive the State aid award under this section.

Other than the annual application and certified enrollment report mentioned above, the amendment does not add or alter any other reporting or recordkeeping requirements for independent colleges and universities, including those located in rural areas. The amendment will not require regulated parties to acquire professional services.

4. COSTS:

a. Costs to the State government. The proposed amendment will not impose additional costs on State government.

b. Costs to local government. None.

c. Costs to private regulatory parties. The proposed amendment may impose negligible costs on regulated entities when applying for state aid awards under Section 6401-a of the Education Law. Specifically, an annual negligible cost may be imposed on regulated parties to complete the required application form and the certified enrollment report.

d. Costs to the regulatory agency. The proposed amendment, which provides for State aid for high needs nursing programs for certain independent institutions of higher learning will add one time negligible additional responsibilities for the State Education Department to develop a basic application and an enrollment report form. The Department will administer the program using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any new mandates on local governments.

6. PAPERWORK:

Other than the annual application and certified enrollment report mentioned above, the amendment does not add or alter any other reporting or recordkeeping requirements for independent colleges and universities, including those located in rural areas. The amendment will not require regulated parties to acquire professional services.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment at this time.

9. FEDERAL STANDARDS:

The proposed amendment provides for State aid for high needs nursing programs for certain independent institutions of higher learning, and requires institutions to be eligible for state aid under the provisions of the constitution of the United States and the constitution of the State of New York.

10. COMPLIANCE SCHEDULE:

Consistent with the effective date of the statute, the proposed amendment applies to certain eligible independent colleges and universities applying for state aid for high needs nursing programs beginning on July 1, 2007.

Regulatory Flexibility Analysis

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State. In order to conform with the new requirements set forth in Section 6401-a of the Education Law, the proposed amendment establishes the eligibility criteria and requirements and procedures for eligible institutions and the Commissioner of Education to follow when applying for, and awarding state aid under this section.

Based on 2005-2006 academic year data, the Department estimates that approximately 43 colleges and universities will be eligible for state aid for high needs nursing programs under Section 6401-a of the Education Law. However, in order to be eligible for state aid under this section, the institution must be a non-profit or independent college or university. Accordingly, the institutions applying for state aid under this section are not small businesses.

Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to certain independent colleges and universities in New York State with high needs nursing programs registered by the State Education Department. Based on 2005-2006 academic year data, the Department estimates that approximately 43 colleges and universities will be eligible for state aid under the proposed regulation. Of these, approximately 12 are located in rural areas, defined as the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State. In order to conform with the new requirements set forth in Section 6401-a of the Education Law, the proposed amendment establishes eligibility criteria and the requirements and procedures for certain eligible institutions and the Commissioner of Education to follow when applying for, and awarding, state aid under this section. Specifically, the amendment makes the following changes:

The amendment authorizes the Commissioner of Education to grant State aid awards to each eligible institution within the amounts appropriated for such purpose, not to exceed one million dollars and based on the availability of funds. In the event that the appropriation cannot fully fund such awards, the proposed amendment allows the Commissioner to appropriate the monies to each eligible institution proportionately based on available funds and pursuant to a schedule determined by the Commissioner.

The awards are computed by multiplying an amount not to exceed two hundred fifty dollars for each full-time student enrolled in a high needs nursing program at an eligible two year degree institution and an amount not to exceed five hundred dollars for each full-time student enrolled in a high needs nursing program at an eligible four year degree institution in the fall semester preceding the annual period for which such an appropriation is made.

This amendment defines an eligible institution as a higher education institution that meets the following requirements: (1) the institution must be a non-profit or independent college or university incorporated by the Regents or the Legislature that is geographically located in New York State; (2) the institution must maintain an earned nursing degree program registered by the department, culminating in an associate degree or higher, excluding any online nursing degree program offered via the internet; (iii) the institution must meet such standards of educational quality applicable to comparable public institutions of higher education, as may be from time to time established by the Regents; and (iv) the institution must meet the requirements for State aid under the constitutions of the United States and the State of New York. The amendment also defines high needs nursing program as any nursing program registered by the department at an eligible institution and shall not include online or internet nursing degree programs.

The proposed amendment requires each eligible institution that wishes to apply for State aid pursuant to this section to apply to the Commissioner by September 15 of the academic year in which they are seeking State aid. It also requires each eligible institution applying for State aid under this section to submit a certification by their chief executive officer to the Commissioner, by November 15 of each year, certifying the number of full-time students enrolled in a high needs nursing program at such institution in the fall semester.

The proposed amendment clarifies that an eligible two year degree institution which has received authority to confer bachelor degrees shall continue to be considered an eligible two year degree institution until such time as it has actually begun to confer bachelors' degrees. Also, in the case of a jointly registered nursing degree program at more than one eligible

institution, the proposed amendment clarifies that the eligible institution granting the degree shall receive the State aid award under this section.

Other than the annual application and certified enrollment report mentioned above, the amendment does not add or alter any other reporting or recordkeeping requirements for independent colleges and universities, including those located in rural areas. The amendment will not require regulated parties to acquire professional services.

3. COSTS:

The proposed amendment implements specific statutory requirements for certain eligible independent colleges and universities. However, the proposed regulation may result in minimal costs to these regulated entities in order to complete the application form and the certified enrollment report.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements the requirements of Chapter 57 of the Laws of 2007. The statute makes no exception and does not impose different requirements for eligible independent colleges and universities located in rural areas. The proposed amendment has been carefully drafted to implement the statutory mandates. The intent of the statute is to establish the eligibility criteria and the requirements and procedures for eligible institutions and the Commissioner of Education to meet, when applying for and/or awarding state aid under this section. Because of the nature of the proposed amendment, imposing different standards for rural entities would be inappropriate.

5. RURAL AREA PARTICIPATION:

A copy of the proposed amendment was shared with each of the independent colleges and universities in New York State with high needs nursing programs, including those located in rural areas.

In addition, comments on the proposed amendment were solicited from the Rural Education Advisory Committee, whose membership includes, among others, representatives of school districts, BOCES, business interests, and government entities located in rural areas.

Job Impact Statement

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs. In order to implement the requirements of section 6401-a, the proposed amendment is need to establish the eligibility criteria for such awards, the application process and the reporting requirements for independent colleges and universities that wish to apply for State aid for high needs nursing programs under this section.

The amendment implements statutory requirements and will have no impact on jobs or employment opportunities. Because it is evident from the nature of this proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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

Special Education Programs and Services

I.D. No. EDU-12-07-00004-ERP

Filing No. 651

Filing date: June 29, 2007

Effective date: July 1, 2007

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

Emergency action taken: Amendment of sections 100.2, 120.6, 200.1-200.9, 200.13, 200.14, 200.16, 200.22, 201.2-201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 3208(1-5), 3209(7), 3214(3), 3602-c(2), 3713(1) and (2), 4002(1-3), 4308(3), 4355(3), 4401(1-11), 4402(1-7), 4403(3), 4404(1-5), 4404-a(1-7) and 4410(13)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to conform the Regulations of the Commissioner of Education to the final federal regulations to implement the Individuals with Disabilities Education Act (IDEA) 2004 as amended by Public Law 108-446. The final Federal regulations were issued August 2006 and

became effective October 13, 2006. The State must amend its laws and regulations to conform to Federal regulations by June 30, 2007 as a condition of receipt of Federal funds. The State and school districts must implement the new requirements in IDEA and the final regulations to implement the IDEA.

A Notice of Proposed Rule Making was published in the *State Register* on March 21, 2007. Since its publication, the proposed amendment has been substantially revised in response to public comment. A Notice of Revised Rule Making was published in the *State Register* on July 3, 2007. In addition, at the June 25-26, 2007 meeting of the Board of Regents, the Regents made a further substantial revision to the proposed rule, as set forth in the Revised Regulatory Impact Statement submitted herewith, to delete the settlement agreement provision in 200.5(j)(4)(iii). Pursuant to the State Administrative Procedure Act section 202(4-a) cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the *State Register*. Accordingly, since the Board of Regents meets at fixed intervals and there is no meeting scheduled for August 2007, the earliest the proposed amendment can be adopted by regular action is the September Regents meeting. However, failure to conform the Commissioner's regulations to Federal and State requirements could expose both the State and school districts to liability and affect their eligibility for Federal funding under IDEA, and could deny students with disabilities, parents and school districts the benefits they are intended to receive under IDEA.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to immediately conform the Commissioner's Regulations regarding the provision of special education services to the requirements of the Federal Individuals with Disabilities Education Act (IDEA), as amended by Public Law 108-446, and Part 300 of Title 34 of the Code of Federal Regulations, so that such requirements become effective by the federally required date of July 1, 2007 and to ensure they are in effect by the beginning of the 2007-08 school year, and thereby ensure the rights of students with disabilities and their parents consistent with Federal and State statutes and ensure compliance with requirements for receipt of Federal funds.

Subject: Special education programs and services.

Purpose: To conform the commissioner's regulations to the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 *et seq.*), as amended by Public Law 108-446, and the final amendments to 34 CFR Part 300; ensure consistency in procedural safeguards; promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities.

Substance of emergency/revised rule: The Board of Regents has amended sections 100.2(ii), 120.6(a), 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.8, 200.9, 200.13, 200.14, 200.16, 200.22, 201.2, 201.3, 201.4, 201.5, 201.6, 201.7, 201.8, 201.9, 201.10, and 201.11 of the Commissioner's Regulations, as an emergency action effective July 1, 2007, relating to the provision of special education to students with disabilities. Since publication of a Notice of Revised Rule Making in the *State Register* on July 3, 2007, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith. The following is a summary of the substance of the emergency and revised proposed rule.

Section 100.2(ii), as added, establishes minimal requirements for using a response to intervention process to determine if a student responds to scientific research-based intervention.

Section 120.6(a), as amended, incorporates by reference the federal definition of highly qualified special education teachers.

Section 200.1, as amended, revises definitions of parent, related services, school health school services and supplementary aids and services; adds the definition of interpreting services consistent with the federal definition; makes technical amendments to definitions of consultant teacher services and transition services; and corrects cross citations relating to definitions of full-day preschool program, guardian ad litem, preschool program, student with a disability and twelve-month special service and/or program.

Section 200.2, as amended, makes technical changes and corrects cross citations and incorporations by reference relating to board of education written policies and procedures, responsibilities of boards of cooperative education services, and maintenance of impartial hearing officer (IHO) lists; requires consent for release of information about nonpublic school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to

referral for special education; and requires districts to publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

Section 200.3, as amended, corrects a cross citation relating to subcommittee membership; and conforms State regulations relating to the role of a regular education teacher on the committee on special education (CSE) to federal regulations.

Section 200.4, as amended, makes technical amendments and corrects cross citations relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: referrals, parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after January 1, 2009 be on a form prescribed by the Commissioner of Education; and adds additional procedures for identifying students with learning disabilities.

Section 200.5, as amended, corrects cross citations relating to other required notifications, consent for release of information, and impartial hearing timelines; corrects incorporations by reference relating to parent participation in CSE meetings and confidentiality of personally identifiable data; makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations, mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner of Education; add steps the district must take to ensure parents participate in the resolution meeting; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Section 200.6, as amended, makes certain technical changes relating to the continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; adds that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that when a district provides integrated co-teaching services, the number of students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Section 200.7(b), as amended, conforms State regulations relating to school conduct and discipline at private schools and State-operated and State-supported schools to federal regulations.

Section 200.8(c), as amended, corrects a cross citation relating to the submission of claims for preschool students with disabilities.

Section 200.9(f), as amended, corrects a cross citation relating to tuition reimbursement methodology.

Section 200.13, as amended, corrects cross citations relating to educational programs for students with autism.

Section 200.14(f), as amended, corrects a cross citation relating to students with disabilities enrolled in day treatment programs.

Section 200.16, as amended, makes technical changes regarding IEEs; corrects cross citations relating to referral and the continuum of services for preschool students; conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

Section 201.2, as amended, removes an incorporation by reference and adds a cross citation relating to the definition of a student presumed to have a disability for discipline purposes; conforms the definitions of disciplinary change in placement, illegal drug, and interim alternative educational setting (IAES) to the federal definitions; adds that the district has authority to determine on a case-by-case basis if a pattern of removals constitutes a disciplinary change in placement and that such determination is subject to review through due process and judicial proceedings.

Section 201.3, is repealed and a new section 201.3 is added to conform CSE responsibilities for functional behavioral assessments and behavioral intervention plans to federal requirements.

Section 201.4, as amended, requires a school district to remedy IEP deficiencies when it is determined that the student's conduct is the direct result of the district's failure to implement the IEP.

Section 201.5, as amended, removes the requirement that an expression of concern about a student's pattern of behavior be made in accordance with the district's child find and special education referral system.

Section 201.6, as amended, requires that expedited evaluations be completed no later than 15 school days after receipt of parent consent.

Section 201.7(e), as amended, corrects a cross citation. Section 201.7(f), as amended, clarifies school personnel authority to consider unique circumstances when determining whether a change in placement is appropriate.

Section 201.8, as amended, repeals the considerations that an IHO must make to order a change of placement to an IAES; and repeals that an IAES ordered by an IHO be determined by the CSE.

Section 201.9(c), as amended, corrects a cross citation relating to the procedures for suspensions of more than five school days.

Section 201.10, as amended, repeals an incorporation by reference and establishes that school personnel determine services for students removed for more than 10 school days when it is not a disciplinary change in placement; and requires the CSE to determine services and the IAES for students suspended for periods in excess of 10 school days which constitute a disciplinary change in placement.

Section 201.11, as amended, conforms procedures for expedited hearings and timelines for an expedited hearing consistent with federal regulations; clarifies that an IHO appointment for an expedited hearing must be made in accordance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

A cross citation has also been corrected in section 200.22(b)(3).

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on March 21, 2007, I.D. No. EDU-12-07-00004-P. The emergency rule will expire September 26, 2007.

Revised rule making(s) were previously published in the State Register on July 3, 2007, I.D. No. EDU-12-07-00004-RP.

Emergency rule compared with proposed rule: Substantial revisions were made in section 200.5(j)(4)(iii).

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

Data, views or arguments may be submitted to: Rebecca H. Cort, Deputy Commissioner, VESID, Education Department, Rm. 1606, One Commerce Plaza, Albany, NY 12234, (518) 473-2714, e-mail: rcort@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on July 3, 2007, the following substantial revision was made to the proposed rule.

Proposed section 200.5(j)(4)(iii), which provided that when parties reach a settlement, the terms of the agreement may be read into the record as an agreement between the parties only the agreement would be enforceable in State or federal court, has been deleted. This revision was made to provide further opportunity for discussion and review of the proposed amendment relating to the decision of an impartial hearing officer and settlement agreements reached by the parties.

The above revision to the proposed rule requires the Local Government Mandates section of the previously published Regulatory Impact Statement be revised to read as follows:

LOCAL GOVERNMENT MANDATES:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the IDEA statutes and regulations and do not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations.

Section 100.2(ii) establishes minimal requirements for using a response to intervention process to determine if a student responds to scientific research-based intervention.

Section 120.6(a) incorporates by reference the federal definition of highly qualified special education teachers.

Section 200.2 requires consent for release of information about non-public school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to referral for special education; and requires districts to

publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

Section 200.3 conforms State regulations relating to the role of a regular education teacher on the CSE to federal regulations.

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: referral, parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after January 1, 2009 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations (IEEs), mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds steps the district must take to ensure parents participate in the resolution meeting; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Section 200.6 makes technical changes regarding continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; provides that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that when a district provides integrated co-teaching services, the number of students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Section 200.7(b) conforms State regulations relating to school conduct and discipline at private schools and State-operated and State-supported schools to federal regulations.

Section 200.16 makes technical changes regarding IEEs; conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

Section 201.2 conforms the definitions of disciplinary change in placement, illegal drug, and interim alternative educational setting (IAES) to the federal definitions; adds that district has authority to determine on a case by case basis if a pattern of removals constitutes a disciplinary change in placement and that such determination is subject to review through due process and judicial proceedings.

Section 201.3 is repealed and a new section 201.3 is added to conform CSE responsibilities for functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs) to federal requirements.

Section 201.4 requires a school district to remedy IEP deficiencies when it is determined that the student's conduct is the direct result of the district's failure to implement the IEP.

Section 201.5 removes the requirement that an expression of concern about a student's pattern of behavior be made in accordance with the district's child find and special education referral system.

Section 201.6 requires that expedited evaluations be completed no later than 15 school days after receipt of parent consent.

Section 201.7(f) clarifies school personnel authority to consider unique circumstances when determining whether a change in placement is appropriate.

Section 201.8 repeals the considerations that an impartial hearing officer (IHO) must make to order a change of placement to an IAES; and repeals that an IAES ordered by an IHO be determined by the CSE.

Section 201.10 establishes that school personnel determine services for students removed for more than 10 school days when it is not a disciplinary change in placement; and requires the CSE to determine services and the IAES for students suspended for periods in excess of 10 school days which constitute a disciplinary change in placement.

Section 201.11 conforms procedures for expedited hearings and timelines for an expedited hearing consistent with federal regulations; clarifies

that an IHO appointment for an expedited hearing must be made in accordance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the *State Register* on July 3, 2007, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revision to the proposed rule requires the Compliance Requirements section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

COMPLIANCE REQUIREMENTS:

In general, the amendments are necessary to conform to the Commissioner's Regulations to recent changes in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et. seq.), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006, and do not impose any additional compliance requirements upon local governments beyond those imposed by federal statutes and regulations.

The amendments relating to evaluation and placement of preschool students; standardized forms for IEPs, written notifications and meeting notices; minimal levels of services for resource room and consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of approved preschool programs are not required by federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with federal standards.

Section 100.2(ii) establishes minimal requirements for using a response to intervention process to determine if a student responds to scientific research-based intervention.

Section 120.6(a) incorporates by reference the federal definition of highly qualified special education teachers.

Section 200.2 requires consent for release of information about non-public school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to referral for special education; and requires districts to publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

Section 200.3 conforms State regulations relating to the role of a regular education teacher on the committee on special education (CSE) to federal regulations.

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: referrals, parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, IEP contents, and students who transfer districts; requires documentation of attempts, including telephone calls and correspondence, to obtain parent consent; requires all IEPs developed on or after January 1, 2009 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations (IEEs), mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds steps the district must take to ensure parents participate in the resolution meeting; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Section 200.6 makes technical changes regarding continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; provides that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that

when a district provides integrated co-teaching services, the number of students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Section 200.7(b) conforms State regulations relating to school conduct and discipline at private schools and State-operated and State-supported schools to federal regulations.

Section 200.16 makes a technical change regarding IEEs; conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

Section 201.2 conforms the definitions of disciplinary change in placement, illegal drug, and interim alternative educational setting (IAES) to the federal definitions; adds that the district has authority to determine on a case by case basis if a pattern of removals constitutes a disciplinary change in placement and that such determination is subject to review through due process and judicial proceedings.

Section 201.3 is repealed and a new section 201.3 is added to conform CSE responsibilities for functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs) to federal requirements.

Section 201.4 requires a school district to remedy IEP deficiencies when it is determined that the student's conduct is the direct result of the district's failure to implement the IEP.

Section 201.5 removes the requirement that an expression of concern about a student's pattern of behavior be made in accordance with the district's child find and special education referral system.

Section 201.6 requires that expedited evaluations be completed no later than 15 school days after receipt of parent consent.

Section 201.7(f) clarifies school personnel authority to consider unique circumstances when determining whether a change in placement is appropriate.

Section 201.8 repeals the considerations that an IHO must make to order a change of placement to an IAES; and repeals that an IAES ordered by an IHO be determined by the CSE.

Section 201.10 establishes that school personnel determine services for students removed for more than 10 school days when it is not a disciplinary change in placement; and requires the CSE to determine services and the IAES for students suspended for periods in excess of 10 school days which constitute a disciplinary change in placement.

Section 201.11 conforms procedures for expedited hearings and timelines for an expedited hearing consistent with federal regulations; clarifies that an IHO appointment for an expedited hearing must be made in accordance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

Consistent with federal requirements, districts must publicly report on revisions to inappropriate policies, procedures or practices resulting in a significant disproportionality by race/ethnicity.

If a district uses a process to determine if a student responds to scientific, research-based intervention, written notification must be given to parents when the student requires an intervention beyond that provided to all students in the general education classroom that identifies student performance data, strategies for increasing the student's rate of learning and notification of the parents' right to request an evaluation for special education programs and/or services. In addition, the CSE must develop a written document for the determination of a student with a learning disability.

Consistent with federal requirements, districts must obtain consent before: personally identifiable information about a nonpublic school student is released between the district of location of the private school and the district of residence; releasing information to a representative of any participating agency that is likely to be responsible for providing or paying for transition services or inviting such individual to a CSE meeting; and accessing a parent's public insurance. Changes also require consent before personally identifiable information is released to officials of participating agencies when a student is determined to be at risk of a future placement in a residential school and before providing evaluative information and program recommendations for a student to a Family Court judge, a probation department, a social services district, the Office of Child and Family Services, or a preadmission certification committee established pursuant to Mental Hygiene Law section 9.51(d).

Changes to due process provisions require that districts provide parents with a copy of the procedural safeguards notice upon receipt of their first State complaint and upon a disciplinary change in placement.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the *State Register* on July 3, 2007, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revision to the proposed rule requires the Reporting, Recordkeeping and Other Compliance Requirements and Professional services section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et. seq.), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006, and do not impose any additional compliance requirements upon local governments beyond those imposed by federal statutes and regulations.

The amendments relating to evaluation and placement of preschool students; standardized forms for IEPs, written notifications and meeting notices; minimal levels of services for resource room and consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of approved preschool programs are not required by federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with federal standards.

Section 100.2(ii) establishes minimal requirements for using a response to intervention process to determine if a student responds to scientific research-based intervention.

Section 120.6(a) incorporates by reference the federal definition of highly qualified special education teachers.

Section 200.2 requires consent for release of information about non-public school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to referral for special education; and requires districts to publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

Section 200.3 conforms State regulations relating to the role of a regular education teacher on the committee on special education (CSE) to federal regulations.

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: referrals, parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, IEP contents, and students who transfer districts; requires documentation of attempts, including telephone calls and correspondence, to obtain parent consent; requires all IEPs developed on or after January 1, 2009 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations (IEEs), mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds steps the district must take to ensure parents participate in the resolution meeting; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Section 200.6 makes technical changes regarding continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; provides that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that when a district provides integrated co-teaching services, the number of

students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Section 200.7(b) conforms State regulations relating to school conduct and discipline at private schools and State-operated and State-supported schools to federal regulations.

Section 200.16 makes a technical change regarding IEEs; conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

Section 201.2 conforms the definitions of disciplinary change in placement, illegal drug, and interim alternative educational setting (IAES) to the federal definitions; adds that the district has authority to determine on a case by case basis if a pattern of removals constitutes a disciplinary change in placement and that such determination is subject to review through due process and judicial proceedings.

Section 201.3 is repealed and a new section 201.3 is added to conform CSE responsibilities for functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs) to federal requirements.

Section 201.4 requires a school district to remedy IEP deficiencies when it is determined that the student's conduct is the direct result of the district's failure to implement the IEP.

Section 201.5 removes the requirement that an expression of concern about a student's pattern of behavior be made in accordance with the district's child find and special education referral system.

Section 201.6 requires that expedited evaluations be completed no later than 15 school days after receipt of parent consent.

Section 201.7(f) clarifies school personnel authority to consider unique circumstances when determining whether a change in placement is appropriate.

Section 201.8 repeals the considerations that an IHO must make to order a change of placement to an IAES; and repeals that an IAES ordered by an IHO be determined by the CSE.

Section 201.10 establishes that school personnel determine services for students removed for more than 10 school days when it is not a disciplinary change in placement; and requires the CSE to determine services and the IAES for students suspended for periods in excess of 10 school days which constitute a disciplinary change in placement.

Section 201.11 conforms procedures for expedited hearings and timelines for an expedited hearing consistent with federal regulations; clarifies that an IHO appointment for an expedited hearing must be made in accordance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

Consistent with federal requirements, districts must publicly report on revisions to inappropriate policies, procedures or practices resulting in a significant disproportionality by race/ethnicity.

If a district uses a process to determine if a student responds to scientific, research-based intervention, written notification must be given to parents when the student requires an intervention beyond that provided to all students in the general education classroom that identifies student performance data, strategies for increasing the student's rate of learning and notification of the parents' right to request an evaluation for special education programs and/or services. In addition, the CSE must develop a written document for the determination of a student with a learning disability.

Consistent with federal requirements, districts must obtain consent before: personally identifiable information about a nonpublic school student is released between the district of location of the private school and the district of residence; releasing information to a representative of any participating agency that is likely to be responsible for providing or paying for transition services or inviting such individual to a CSE meeting; and accessing a parent's public insurance. Changes also require consent before personally identifiable information is released to officials of participating agencies when a student is determined to be at risk of a future placement in a residential school and before providing evaluative information and program recommendations for a student to a Family Court judge, a probation department, a social services district, the Office of Child and Family Services, or a preadmission certification committee established pursuant to Mental Hygiene Law section 9.51(d).

Changes to due process provisions require that districts provide parents with a copy of the procedural safeguards notice upon receipt of their first State complaint and upon a disciplinary change in placement.

Revised Job Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on July 3, 2007, the proposed rule has been substantially revised

as set forth in the Revised Regulatory Impact Statement submitted herewith.

The proposed rule, as revised, is necessary in order to ensure compliance with federal law and regulations and State law relating to the education of students with disabilities, ages 3-21; to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Assessment of Public Comment

A Notice of Proposed Rule Making was published in the *State Register* on March 21, 2007 and a previous Notice of Revised Rule Making was published on July 3, 2007. A Summary of Assessment of Public Comment was included with the Notice of Revised Rule Making published on July 3rd. The Summary included, among others, comments regarding the provision in proposed section 200.5(j)(4)(iii) relating to settlement agreements. Since then, the Department has not received any public comment under State Administrative Procedure Act section 202(4-a) that was not otherwise addressed in the Summary published on July 3rd. However, at the June 25-26, 2007 meeting of the Board of Regents, the Regents revised the proposed rule, as set forth in the Revised Regulatory Impact Statement submitted herewith, to delete the settlement agreement provision in 200.5(j)(4)(iii). In view of the deletion of the settlement provision, the Department response, as set forth in the Summary of Assessment of Public Comment published on July 3rd, to the comments regarding this provision has been revised as follows:

COMMENT:

Comments of support were received to retain the proposed language regarding settlement agreements. However, some expressed concern that the proposal may violate IDEA 2004; may affect the recovery of attorneys' fees and the ability for parents, particularly low-income parents, to find and retain attorneys; and may make it less likely that school districts will comply with settlement agreements. A comment suggested clarifying that when partial agreement is reached in the form of agreement on any one or more issues among those raised, the regulation would not require the hearing to be closed and presumably the process to start over before a new IHO with respect to outstanding issues. Some stated that the proposed amendment appears to interfere with the independence of the IHO and with a parent's ability to demonstrate exhaustion of administrative remedies with regard to all or part of a claim.

DEPARTMENT RESPONSE:

To provide further opportunity for discussion and review of the proposed amendment relating to the decision of an impartial hearing officer and settlement agreements reached by the parties, the proposed rule has been revised to delete section 200.5(j)(4)(iii).

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

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

I.D. No. EDU-26-07-00010-ERP
Filing No. 652
Filing date: June 29, 2007
Effective date: July 1, 2007

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

Emergency action taken: Addition of section 145-2.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 661(4) and L. 2007, ch. 57

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement paragraphs (d) and (e) of subdivision (4) of Section 661 of the Education Law, as added by Chapter 57 of the Laws of 2007, to identify certain ability-to-benefit tests and the passing scores for such tests that the Board of Regents approves as an alternative to

a certificate of graduation from a school providing secondary education or its recognized equivalent, for purposes of eligibility for general awards, academic performance awards or student loans prescribed under Section 661 of the Education Law. The proposed amendment also establishes the criteria the Commissioner will utilize to determine if an approved ability-to-benefit test has been independently administered.

Emergency action is necessary for the preservation of the general welfare to permit the implementation of the new statutory requirements by July 1, 2007, the effective date of Section 661 (4)(d) (e) of the Education Law; thereby permitting eligible students who do not hold a diploma from a high school located in the United States, or its recognized equivalent to apply for State student financial aid in a timely manner for the 2007-2008 academic year.

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

Subject: Administration of ability-to-benefit tests for eligibility for awards and loans.

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

Text of emergency/revised rule: Section 145-2.15 of the Regulations of the Commissioner of Education is added, effective July 1, 2007, as follows:

§ 145-2.15. Administration of ability-to-benefit tests for purposes of eligibility for awards and loans.

(a) *Applicability.* To the extent authorized by Chapter 57 of the Laws of 2007 and section 661 of the Education Law, this section identifies certain ability-to-benefit tests approved by the Board of Regents and the passing scores for such tests, for purposes of eligibility for general awards, academic performance awards or student loans prescribed under section 661 of the Education Law. This section also establishes the criteria the commissioner will utilize to determine whether an approved ability-to-benefit test is independently administered. Such requirements shall be applicable to students who first receive aid pursuant to section 661 of the Education Law in academic year 2007-2008.

(b) *Definitions.* For purposes of this section:

(1) *Assessment center* means a center that:

(i) is not located and/or affiliated with an eligible institution as defined in this subdivision; or

(ii) is located at an eligible institution if the following requirements are met:

(a) the center is responsible for gathering and evaluating the information about individual students for multiple purposes, including appropriate course placement;

(b) the center is independent of the admissions and financial aid processes at the institution in which it is located;

(c) the center is staffed by professional employees who have been trained in test administration and federal guidelines regarding the administration of ability-to-benefit tests and who are not employed through the admissions, student financial aid, or registrar's offices of the institution; and

(d) the center does not have as its primary purpose the administration of ability-to-benefit tests.

(2) *Federally approved ability-to-benefit test* means an ability-to-benefit test approved by the Secretary for federal financial aid purposes.

(3) *School providing secondary education from a state within the United States* means a school authorized, recognized or approved by a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(4) *Secretary* means the Secretary of the United States Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

(c) *Ability-to-benefit tests approved by the Board of Regents for eligibility for awards and loans under section 661 of the Education Law.*

(1) *For students first receiving aid pursuant to Section 661 of the Education Law in the 2007-2008 academic year and each academic year*

thereafter, students shall have a certificate of graduation from a recognized school providing secondary education from a state within the United States, or the recognized equivalent of such certificate, or receive a passing score on a federally approved ability-to-benefit test identified by the Board of Regents as satisfying the eligibility requirements of this section that has been independently administered and evaluated, as defined by the commissioner in subdivision (e) of this section.

(2) For purposes of eligibility for awards and loans under section 661 of the Education Law, the department shall publish a list of ability-to-benefit tests that the Board of Regents has identified as satisfactory in determining eligibility to receive a first award in the academic year 2007-2008 and each year thereafter for students without a certificate of graduation from a school providing secondary education from a state within the United States or the recognized equivalent of such a certificate. The identification of such tests shall be without term unless the department determines that a test is no longer satisfactory in determining eligibility for awards and loans under section 661 of the Education Law or the Secretary discontinues federal recognition of such test.

(d) Satisfactory passing score. For purposes of eligibility for awards and loans under section 661 of the Education Law, an eligible institution shall submit for approval by the Board of Regents, the passing score it proposes to utilize on any ability-to-benefit test approved by the Board of Regents under subdivision (c) of this section, in a form prescribed by the commissioner. Such score shall not be lower than the score set by the Secretary and the eligible institution shall submit an explanation of its reasons for selecting such passing score and any other information the commissioner may require. Approval of such passing score shall be without term unless the department determines that the passing score is no longer satisfactory in determining eligibility for awards and loans under section 661 of the Education Law or the institution seeks to change such passing score or no longer offers the approved ability-to-benefit test.

In determining whether to approve the proposed score or scores, the commissioner shall take into consideration the following factors:

(1) the level of curricula the institution offers, as provided in section 52.2(c) of this title;

(2) the admission criteria and procedures the institution utilizes to evaluate the capacity of a student to undertake a course of study and the capacity of the institution to provide instructional and other support services to ensure that the student can complete the course of study, as is required by section 52.2(d)(2) of this Title;

(3) evidence that the admission criteria and procedures that the institution utilizes are effective in admitting only persons who have the capacity to undertake a course of study and that the institution provides proper instructional and support services;

(4) the adequacy of the academic support services the institution provides under section 52.2(f)(2) of this Title, which shall be evidenced by the institution's record in promoting successful student outcomes; the percentage of first-time students enrolling in noncredit remedial courses; the percentage of first-time students returning at the beginning of the next academic year; the percentage of first-time students earning an associate degree within three years or a baccalaureate degree within six years from the date they entered the institution and such other information as the commissioner shall specify; and

(5) evidence that the institution evaluates the success of its academic and other support services in providing instructional and other support services that the student needs to complete the program and that the institution uses the evaluation to improve those services and to modify its admission criteria and procedures.

(e) Independent administration and evaluation of ability-to-benefit test. For purposes of meeting the eligibility requirements for awards or loans under section 661 of the Education Law, the institution shall independently administer ability-to-benefit tests approved by the Board of Regents in accordance with the requirements of this section. The department will consider an ability-to-benefit test to be independently administered and evaluated if the following requirements are met:

(1) the test is administered at an assessment center that is not located and/or affiliated with the institution for which the student is seeking enrollment and the test administrator is an employee of such center; or

(2) the test is administered at a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution and the chief executive officer of such institution certifies annually, in a form prescribed by the commissioner, that:

(i) the test is administered by a unit of the institution that is responsible for other forms of testing or for a provision of academic

support services, or both, and such unit does not report to officers responsible for admissions or the administration of student financial aid for such institution;

(ii) the test is administered in an environment that is separate, secure, closed and continuously monitored during testing;

(iii) students are required to provide written verification of identity, such as a photo identification, and to sign in prior to taking the test and students are prohibited from bringing into the test area any materials prohibited by the test publisher and are required to leave the test area immediately upon completion of the test;

(iv) the test is proctored by professional employees who have been trained in test administration and federal guidelines regarding the administration of ability-to-benefit tests and who are not employed through the admissions, student financial aid, or registrar's offices of the institution;

(v) each test used for ability to benefit purposes is administered to all students together and the test administrator is unaware which students are taking the test for ability to benefit purposes until after the test is completed and scored;

(vi) the scoring of ability-to-benefit tests is overseen by institutional employees who are not employed through the admissions, student financial aid, or registrar's offices and such scores are verified by more than one employee;

(vii) all tests, test results, and test databases, if any, are kept in locked and secure containers;

(viii) the test administrator has no prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test;

(ix) the test administrator is not a current or former member of the board of directors, a current or former employee or a consultant to a member of the board of directors or a chief executive officer;

(x) the test administrator is not a current or former student of the institution;

(xi) the test administrator is not scoring the test; and

(xii) the annual certification shall also include the following information relating to the previous academic year: the number of students examined, the number of re-tests administered, the scores on all ability-to-benefit tests for each student examined, the number of students achieving passing scores on such tests, the number of students tested that are enrolling in such institution and the success of tested students in terms of retention and graduation.

(3) The commissioner will not consider a test independently administered if an institution:

(i) compromises test security or testing procedures;

(ii) pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or

(iii) otherwise interferes with the test administrator's independence or test administration.

(4) Any institution administering an ability-to-benefit test shall maintain a record for each student who sat for an ability-to-benefit test under this section, including the name of test taken by such student, the date of the test and the student's scores on such tests.

(5) Upon request, the eligible institution shall provide the commissioner with access to test records or other documents related to an audit, investigation or program review of the institution.

(6) If the commissioner finds that an institution has violated the certification procedures or the ability-to-benefit test procedures under this section, the commissioner shall have the authority to require an eligible institution to employ an assessment center independent of such institution.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on June 27, 2007, I.D. No. EDU-26-07-00010-P. The emergency rule will expire September 26, 2007.

Emergency rule compared with proposed rule: Substantial revisions were made in section 145-2.15(e)(2)(ix), (x), (xi), (xii), (xiii).

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 27, 2007, the following substantial revisions were made to the proposed regulation:

Subparagraph (ix) of paragraph (2) of subdivision (e) of section 145-2.15 was deleted. Subdivision (e) of section 145-2.15 defines independent administration for eligibility for awards and loans. Pursuant to this subdivision, the department will consider an ability-to-benefit test to be independently administered if the test is administered at an assessment center that is not located with the institution for which the student is seeking enrollment or the test is administered at a degree-granting institution that confers two-year or four-year degrees if the chief executive officer of such institution certifies annually, in a form prescribed by the commissioner, that certain criterion have been met. The criterion set forth in subparagraph (ix) of paragraph (2) of subdivision (e) requires that the test administrator is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation. This criterion is not appropriate because it would prohibit an institution from using its own employees to proctor and administer tests. Therefore, this subparagraph has been deleted and subparagraphs (x) through (xiii) have been renumbered to subparagraphs (ix) through (xii).

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

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 27, 2007, the proposed regulation was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed regulation do not require any revisions to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 27, 2007, the proposed regulation was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed regulation do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the *State Register* on June 27, 2007, the proposed regulation was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed regulation, as so revised, relates to the administration of ability-to-benefit tests for eligibility for awards and loans. The revised regulation will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised regulation that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION**Superintendents' Conference Days**

I.D. No. EDU-15-07-00003-A

Filing No. 655

Filing date: June 29, 2007

Effective date: July 19, 2007

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

Action taken: Amendment of section 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3604(8)

Subject: Superintendents' conference days.

Purpose: To extend for two years the provision in commissioner's regulations section 175.5(f) that allows a school district to use up to two of its superintendents' conference days for teacher rating of State assessments.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-15-07-00003-P, Issue of April 11, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION**Harvest and Possession of Summer Flounder**

I.D. No. ENV-19-07-00011-A

Filing No. 662

Filing date: July 3, 2007

Effective date: July 18, 2007

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

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

Statutory authority: Environmental Conservation Law, sections 13-1015 and 13-0340-b

Subject: Harvest and possession of summer flounder.

Purpose: To control the recreational harvest and possession of summer flounder consistent with fisheries management plans.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ENV-19-07-00011-EP, Issue of May 9, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733-3400, (631) 444-0435, e-mail: swheins@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Assessment of Public Comment

This proposed rulemaking, which amends New York's regulations for recreational harvest of summer flounder, was published in the New York State Register on May 9, 2007. The proposed amendments raise the summer flounder recreational size limit to 19.5 inches from 18 inches; and increase the length of the season from approximately four months (May 6 through September 12) to year-round.

The Department received written comment from a total of 6 individuals during the public comment period for this rulemaking. All of the comments expressed opposition to the proposed amendments. Specific comments are addressed below:

Comment: The new regulations are adversely affecting party and charter boat businesses.

Response: The Department is required to comply with the provisions of the joint Atlantic States Marine Fisheries Commission/National Marine Fisheries Service summer flounder, scup and black sea bass fishery management plan (FMP). Failure to do so could lead to a federal closure of New York's fishery for summer flounder. In order to achieve compliance, the Department must adopt regulations which provide at least a 75% chance that New York fishermen will stay within New York's assigned 2007 harvest limit for summer flounder.

Several options for changes to the regulations were developed which met the requirements of the plan. These were approved by the ASMFC and presented to the public through several media venues, including an option for keeping the size limit at 18 inches, but reducing the length of the season dramatically. Many members of the party and charter boat industry and several industry groups made it clear at that point that they favored having a year-round fishing season, which necessitated a 19.5" size limit. The Department's regulations were responsive to this public input. The Department cannot adopt a size limit less than 19.5 inches and remain in compliance with the FMP, unless an extremely low possession limit and a very short open season are adopted. Based upon advice from the industry and Marine Resources Advisory Council (MRAC) prior to proposing the rule, the Department believes the impacts of these alternatives on the fishery would be far more severe than the impacts of the proposed rule.

Comment: The regulations discourage recreational fishing for summer flounder. The taking of a few fish smaller than 18 or 19 inches by recreational fishermen would not overfish the summer flounder stocks.

Response: The regulations were calculated and designed to prevent New York anglers from exceeding New York's harvest limit. The Department cannot allow harvest of fish smaller than 18 inches without severely restricting the season and bag limit, or risk exceeding the harvest limit. See first response above for an explanation of FMP requirements.

Comment: The Department should use a slot limit as a way to allow recreational fishermen to take some smaller fish that they catch but still allow the biomass of large fish to grow.

Response: The Department will examine whether or not a slot limit could be adopted while maintaining compliance with the FMP for fluke. The Department will consider this option for future rulemaking in 2008.

Comment: New Jersey and New York share the same fishery resource, yet New Jersey anglers fish under less restrictive rules.

Response: For fluke, each state is assigned a proportion of the total allowable harvest for the coast, based upon history of recreational catches. New Jersey's share (or "quota") is much larger than New York's. In theory, this difference should not have a dramatic effect on each state's regulations, and they should be similar. However, in practice, New York has not been able to maintain harvest levels within its quota without imposing regulations that are stricter than New Jersey's regulations. It is apparent from this situation that either the original state-by-state allocations did not accurately reflect the true history of each state's recreational harvest, or the fishery has changed as the stock is rebuilding. Allocation and inter-state inequities will be addressed in a future amendment to the FMP, which could result in more consistency in regulations between New York and its neighboring states.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Native Reptiles and Amphibians

I.D. No. ENV-29-07-00011-P

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

Proposed action: Repeal of section 2.2 and amendment of Part 3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0103, 11-0303, 11-0311, 11-0903, 11-0905 and 11-0909

Subject: Native reptiles and amphibians.

Purpose: To implement changes to the Environmental Conservation Law that protect native reptiles and amphibians.

Text of proposed rule: Part 2 of Title 6 NYCRR is amended as follows:

Section 2.2 is repealed.

Part 3 of Title 6 NYCRR is amended as follows:

Part 3 is renamed to read as follows:

"Reptiles and Amphibians"

Section 3.1, "Protection of diamondback terrapin," is renamed to read as follows:

Section 3.1 [Protection of diamondback] *Diamondback* terrapins.

A new section 3.2, "Native turtles," is added to read as follows:

3.2 *Native turtles.*

(a) "Definition." For purposes of this section, "native turtles" shall mean: snapping turtle, common musk turtle, eastern mud turtle, spotted turtle, bog or Muhlenberg's turtle, wood turtle, eastern box turtle, common map turtle, painted turtle, Blanding's turtle, green sea turtle, Atlantic hawksbill sea turtle, loggerhead sea turtle, Atlantic or Kemp's ridley sea turtle, leatherback sea turtle, and eastern spiny softshell turtle.

(b) *Snapping turtles.*

(1) "Open season." July 15 to September 30.

(2) "Size limit." Minimum length: 12 inches. No person shall harvest, take or possess a snapping turtle with an upper shell (carapace) that measures, using a straight line, less than twelve inches in length.

(3) "Bag limit." Daily limit: 5. Seasonal limit: 30.

(4) "Hunting hours." Snapping turtles may be hunted at any time.

(c) *All other native turtles.*

(1) "Open season." None.

A new section 3.3, "Native snakes," is added to read as follows:

3.3 *Native snakes.*

(a) "Definitions." For purposes of this section, "native snakes" shall mean: northern water snake, queen snake, northern brown snake, northern redbelly snake, common garter snake, shorthead garter snake, ribbon

snake, eastern hognose snake, northern ringneck snake, eastern worm snake, northern black racer, smooth green snake, black rat snake, eastern milk snake, northern copperhead, eastern massasauga, and timber rattle-snake.

(b) "Open season." None.

A new section 3.4, "Native lizards," is added to read as follows:

3.4 *Native lizards.*

(a) "Definitions." For purposes of this section, "native lizards" shall mean: northern fence lizard, five-lined skink, and northern coal skink.

(b) "Open season." None.

A new section 3.5, "Native frogs," is added to read as follows:

3.5 *Native frogs.*

(a) "Definitions." For purposes of this section, "native frogs" shall mean: eastern spadefoot toad, eastern American toad, Fowler's toad, northern cricket frog, northern gray treefrog, northern spring peeper, western chorus frog, bullfrog, green frog, mink frog, wood frog, northern leopard frog, southern leopard frog, and pickerel frog.

(b) "Hunting season." June 15 to September 30 for all wildlife management units, except that:

(i) *Leopard frogs shall not be taken in wildlife management units 1A, 1C or 2A.*

(ii) *Northern cricket frogs and eastern spadefoot toads shall not be taken in any area of the state.*

(c) "Size limit." None.

(d) "Bag limit." None.

(e) "Hunting hours." Frogs may be taken at any time, except that no person shall use a gun to take frogs when hunting at night (sunset to sunrise).

A new section 3.6, "Native salamanders," is added to read as follows:

3.6 *Native salamanders.*

(a) "Definitions." For purposes of this section, "native salamanders" shall mean: eastern hellbender, mudpuppy, marbled salamander, Jefferson salamander, blue-spotted salamander, spotted salamander, eastern tiger salamander, red-spotted newt, northern dusky salamander, mountain dusky salamander, redback salamander, northern slimy salamander, Wehrle's salamander, four-toed salamander, northern spring salamander, northern red salamander, northern two-lined salamander, and longtail salamander.

(b) "Open season." None.

Text of proposed rule and any required statements and analyses may be obtained from: Daniel Rosenblatt, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8919, e-mail: dlrosenb@gw.dec.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (Department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Specifically, ECL 11-0103 was amended to include all native amphibians and reptiles as small game with ECL Sections 11-0311, 11-0903, 11-0905 and 11-0909 establishing the Department's regulatory authority for setting seasons, bag limits and methods of take for amphibians and reptiles.

2. Legislative Objectives

The legislative objectives behind the statutory provisions listed above was to establish, or authorize the Department to establish by regulation, certain basic wildlife management tools, including the setting of open seasons, and restrictions on methods of take and possession for certain species of wildlife that were previously unprotected. These tools are used by the Department to maintain desirable wildlife species in ecological balance, while observing sound management practices and providing for public use of the resource. The amendments to the ECL pertaining to reptiles and amphibians provide new protections to these species, while allowing the managed harvest of selected turtles and frogs.

3. Needs and Benefits

The proposal would establish regulations pertaining to the protection and, in some cases, the regulated harvest of selected species of turtles and frogs.

The proposal would create a season, size limit, and bag limit for harvesting snapping turtles. Snapping turtles have historically been harvested for food in the absence of any regulatory measures to limit harvest. While a few persons may harvest a turtle for their own consumption, several commercial collectors reportedly harvested thousands of turtles using a variety of methods, including taking of turtles prior to the females having nested for the year. This proposal would protect egg-bearing females prior to nesting, and young turtles that have not reached reproductive size, helping to assure self-sustaining populations for the future. It would also provide bag limits (daily and seasonal) for the harvest snapping turtles.

This proposed regulatory change would also restructure existing regulations pertaining to the harvest of frogs and diamondback terrapins so that all regulations dealing with take of these two species groups (reptiles and amphibians) would be in the same Part of the official compilation of Codes, Rules, and Regulations (6 NYCRR).

Finally, the proposed regulation specifically defines “native” lizards, salamanders, and frogs to implement the new provisions of the Environmental Conservation Law that protect these species.

4. Costs

There are no other costs associated with these regulatory changes beyond normal administrative costs.

5. Local Government Mandates

This rulemaking does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed rules do not impose additional reporting requirements upon the regulated public.

7. Duplication

There are no other local, state or federal regulations concerning hunting season structure and license use. The Department is the primary government agency with regulatory authority for the managed harvest of game species in New York.

8. Alternatives

The only alternative is “No Action,” which is not acceptable for any of the elements of this proposed rulemaking. Failure to adopt new regulations would mean that the changes to the Environmental Conservation Law would not be fully implemented.

9. Federal Standards

There are no federal standards affecting this regulatory proposal.

10. Compliance Schedule

Upon the effective date of the proposed regulation.

Regulatory Flexibility Analysis

The proposed rulemaking will establish an open season for harvesting snapping turtles. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting and trapping regulations. Based on the Department’s experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on small businesses or local governments.

Some commercial harvest of snapping turtles has taken place in the past in parts of the state when snapping turtles were not protected by state law. Recently, the state legislature added snapping turtles to the list of protected species, which in effect prohibits the harvest of snapping turtles unless specifically authorized by statute or regulation. This proposed rulemaking will establish an open hunting season for snapping turtles. Without this proposal, there will be no open season for snapping turtles in New York. For this reason, it is believed that the proposed rulemaking will have a positive impact on any small business that harvest snapping turtles. Local governments are not involved in the harvest of snapping turtles, so the proposal should have no effect on them.

The Department has also determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Any reporting or recordkeeping requirements associated with this proposal would be administered by the Department.

Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The proposed rulemaking will establish an open season for harvesting snapping turtles. The Department of Environmental Conservation (Department)

has historically made regular revisions to its hunting and trapping regulations. Based on the Department’s experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on rural areas.

Recently, the state legislature added snapping turtles to the list of protected species, which in effect prohibits the harvest of snapping turtles unless specifically authorized by statute or regulation. Some harvest of snapping turtles took place in the rural areas of New York when snapping turtles were not protected by state law. This proposed rulemaking will establish an open hunting season for snapping turtles. Without this proposal, there would be no open season for snapping turtles in New York. For this reason, it is believed that the proposed rulemaking will have a positive impact on any individuals or entities in rural areas that harvest snapping turtles.

The Department has also determined that this rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Any reporting or recordkeeping requirements associated with this proposal would be administered by the Department.

Therefore, the Department has concluded that a rural area flexibility analysis is not required.

Job Impact Statement

The proposed rulemaking will establish an open season for harvesting snapping turtles. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting regulations. Based on the Department’s experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not have a substantial adverse impact on jobs and employment opportunities.

Some commercial harvest of snapping turtles has taken place in the past in parts of the state when snapping turtles were not protected by state law. Recently, the state legislature added snapping turtles to the list of protected species, which in effect prohibits the harvest of snapping turtles unless specifically authorized by statute or regulation. This proposed rulemaking will establish an open hunting season for snapping turtles. Without this proposal, there will be no open season for snapping turtles in New York. For this reason, it is believed that the effect of proposed rulemaking on jobs and employment opportunities, if it has any effect at all, will be positive. Therefore, the Department has concluded that a job impact statement is not required.

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

Outdoor Recreation And Trail Maintenance Pin and Patch Program

I.D. No. ENV-29-07-00017-P

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

Proposed action: This is a consensus rule making to add Part 198 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301(2)(m) and 11-0329

Subject: Outdoor Recreation and Trail Maintenance Pin and Patch Program.

Purpose: To implement a voluntary outdoor recreation and trail maintenance pins and patches program.

Text of proposed rule: Add a new Part 198 to Title 6 NYCRR to read as follows:

Part 198

Outdoor Recreation and Trail Maintenance Pin and Patch Program Regulation

§ 198.0 Applicability

The provisions of this part apply solely to the Outdoor Recreation and Trail Maintenance Pin and Patch Program. The department shall mean the New York State Department of Environmental Conservation.

§ 198.1 Purpose

The purpose of this part is to establish the procedures for the administration, sale, promotion and distribution of pins and patches to support non-motorized outdoor recreation and trail maintenance. The purchase of such pins and/or patches is voluntary and need not be possessed in order

to participate in outdoor recreational activities on department managed lands.

§ 198.2 Production

(a) The department may enter into contracts for the production of outdoor recreation and trail maintenance pins, patches, associated promotional posters and for related services including, but not limited to manufacturing, distribution, promotion, marketing and sale.

(b) The department shall be solely responsible for the selection and means and method of selection of artists and art work for such outdoor recreation and trail maintenance pins, patches and associated promotional posters.

(c) Department staff shall establish the production size for each edition of such pins, patches and posters based on previous sales history and future sale expectations.

§ 198.3 Price

The Commissioner of the department shall annually set the respective sale price for each patch, pin, and associated promotional poster.

§ 198.4 Sale

(a) License issuing officers defined and designated in accordance with section 11-0713 of the Environmental Conservation Law and section 183.2 of this title may sell outdoor recreation and trail maintenance pins and/or patches, and may retain 5.5 percent of the gross proceeds from such sale. Employees of the department may sell such pins and/or patches, but may not retain 5.5 percent of the gross sale.

(b) The department may make bulk sales of such pins and/or patches to outdoor recreation retailers and educational retailers deemed to be in keeping with the purpose of this part.

(c) All moneys, revenue and interest received by the department as a result of issuance and sale of outdoor recreation and trail maintenance pins, patches and/or posters, other than the amount retained by the license issuing officer, shall be deposited in a special account within the conservation fund to be known as the outdoor recreation and trail maintenance account. All such moneys, revenues and interest shall be available to the department, pursuant to appropriation, exclusively for non-motorized outdoor recreation, trail maintenance, and the development and improvement of public access to outdoor recreation and trails.

(d) The department may use up to 10 percent of such revenue for the administration of this program, and is required to use at least 15 percent of such revenue for universal access to recreational opportunities for as many people as possible, regardless of age or ability.

§ 198.5 Promotion

(a) The outdoor recreation and trail maintenance pins and patches may be donated for auction or raffle to not-for-profit organizations supportive of the outdoor recreation and trail maintenance program upon written request. Requests for such pins, patches and associated promotional posters must be in writing on the organization's letterhead stationery, stating the organization's purpose and goals and the date of the event at which such pins and patches will be auctioned. The department reserves the right to limit or deny an organization's request for such pins and/or patches where the numbers requested exceed the available supply or where the department finds that the proposed use of such pins and patches may be inconsistent with the purposes and policies set forth in section 11-0329 of the Environmental Conservation Law.

(b) A total of no more than 100 pins and 100 patches and 100 posters from each edition will be reserved for use by, and may be made available to department staff, other state agencies, landowners and project coordinators or others who assist the department in promoting the Outdoor Recreation and Trail Maintenance Pin and Patch program. Such use of pins, patches and posters is solely for the purpose of display to the public at promotional events and to otherwise promote the program.

(c) The department in its discretion may enter into agreements permitting reproduction of the design for the pins, patches, and posters for other products when the use of such design promotes awareness of the Outdoor Recreation and Trail Maintenance Pin and Patch Program, and when each individual product contains a statement about the program.

§ 198.6 Disposal

In the event that the Outdoor Recreation and Trail Maintenance Pin and Patch Program is terminated, any such pins, patches and associated promotional posters in the possession of the department at such time may be disposed of at the department's discretion.

§ 198.7 Severability

If any provision of this part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other

provisions of this part or its application to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: McCrea Burnham, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-9405, e-mail: smburnha@gw.dec.state.ny.us

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

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

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

Consensus Rule Making Determination

The Department believes there will be no objection to the promulgation of this regulation since this is a completely voluntary program that will benefit recreational use. The funds will be used to maintain non-motorized trails. This program was put in place with the support of user groups who have urged the department to better maintain trail systems.

Job Impact Statement

This proposed regulation will implement a voluntary Outdoor Recreational Trail Maintenance Pin and Patch Program. It will set forth the methods for the sale of hiking pins and patches. All revenue received from this program will be deposited in a special account within the Conservation Fund to be used for outdoor recreation, trail maintenance, and the development and improvement of public access to outdoor recreation and trails.

A job impact statement is not submitted with the proposal because the proposal will have no adverse impact on existing or future jobs and employment opportunities.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Swimming Pools

I.D. No. HLT-29-07-00001-P

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

Proposed action: Amendment of Subpart 6-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Swimming pools.

Purpose: To modify instructional swimming supervision requirements and correct an inconsistency between the requirements for supervision level IV use rules and the written statement/brochure requirements.

Text of proposed rule: Paragraph (6) of subdivision (a) of Section 6-1.23 is amended as follows:

(6) The aquatic supervisory staff shall be at pool side, providing direct supervision of the pool patrons, except [that of] at pools requiring Supervision Level IV and spa pool facilities. At spa pools the Supervision Level III aquatic staff shall be on premises and shall provide periodic supervision as specified in the safety plan. Aquatic supervisory staff on duty shall be engaged only in activities that involve the direct supervision of bathers. When instructional activities occur, including but not limited to learn to swim programs, physical education classes and swim team activities, and the [required] supervisory staff required by paragraphs (4) and (5) of this subdivision provide the instruction, at least one additional staff meeting at least Supervision Level III must be provided [when the instructional activities may be reasonably expected to distract required supervisory staff from direct supervision of all bathers] for each aquatic supervisory staff engaging in instructional activities. When a Supervision Level III staff is utilized to assist a Supervision Level II staff with direct supervision of bathers during instruction, the Supervision Level III staff must possess certification in aquatic injury prevention and emergency response as specified in Section 6-1.31(c)(2) of this Title. The written safety plan must describe the duties, positioning at pool side and interaction between the Supervision Level II and III staff which ensures adequate bather supervision and emergency response.

Subparagraph (vii) of Section 6-1.23(a)(10) is amended as follows:

(vii) The bathing facility operator shall provide to all patrons a written statement or brochure. Only patrons who have received this statement may use the bathing facility. The brochure or statement must state at least the following:

NEVER SWIM ALONE. A minimum of two adults, 18 years of age or older, must be present whenever this swimming facility is in use, *with at least one adult remaining on the pool deck.*

* * *

Subdivision (c) of Section 6-1.31 is amended as follows:

(c) Supervision Level III. [(1) The requirements of this Subdivision shall take effect on May 15, 1993.

(2)] (1) No person shall be qualified under this subdivision unless such a person:

- (i) has a minimum age of 18 years; and
- (ii) possesses a current A.R.C. community CPR or equivalent certification; the certification period must not exceed one year; and
- (iii) is competent to:

(a) understand and apply the rules and regulations of this Part and implement the safety plan; and

(b) evaluate environmental hazards; and

(c) use lifesaving equipment and facility; and

(d) undertake bather/crowd control.

(2) *The requirements of this paragraph shall take effect on January 1, 2008. When a Supervision Level III staff assists a Supervision Level II staff with direct supervision of bathers during instruction as specified in Section 6-1.23(a)(6) of this Chapter, the Supervision Level III staff shall possess certification in aquatic injury prevention and emergency response. No person shall be qualified under this paragraph unless such a person possesses certification in Lifeguard Management issued by the American Red Cross or a certificate issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of training in aquatic injury prevention and emergency response. Certifications shall be valid for the time period specified by the certifying agency, but may not exceed a consecutive three-year period from course completion.*

Text of proposed rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority:

The Public Health Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL Sections 225(5)(a) and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including swimming pools and bathing establishments. Sections 1340-1342 of the PHL set forth sanitary and safety requirements for bathing establishments.

Legislative Objectives:

In authorizing adoption of the SSC and in enacting PHL Section 225(5) and 201(1)(m), the legislative objective was to protect public health and safety. The proposed amendments further the legislative objective of protecting the health and safety of the public by improving supervision at swimming pools.

Needs and Benefits:

Instructional Supervision:

As a result of student drownings during school physical education classes, two amendments, which clarify and improve the requirements for bather supervision during instructional activities, are proposed. One amendment eliminates existing code language that states an instructor who is also serving as the required lifeguard is only required to have an additional lifeguard or Level III supervisor when he/she is “reasonably expected to be distracted” from lifeguard duties. This change is necessary because instructors’ duties will always distract them from proper swimming pool surveillance and the previous code language was frequently misinterpreted. Often in schools, the physical education teacher that is responsible for instructing a class is also the qualified lifeguard responsible for providing direct supervision of bathers in the pool. Because the teacher has many responsibilities that can interfere with surveillance of the pool, bather safety is compromised.

Additionally, because the current criteria for Supervision Level III staff do not include training in victim recognition, injury prevention and emergency response, a second amendment adds a knowledge based training requirement for Supervision Level III staff to ensure bather safety is not lessened. The training provides Supervision Level III staff with knowledge necessary to effectively assist with supervision of bathers but does not include swimming and in water rescue skills. Swimming and in water rescue skills will continue to be provided by the instructor/lifeguard.

Level IV Supervision Written Statement/Brochure Requirements

Supervision level IV (patron use rules and signage) is allowed by code for small shallow pools (less than 2000 square feet in surface area and less than 5 feet in depth) and temporary residences and campgrounds defined by Part 7 of this title. The requirements for use of supervision level IV include compliance with specified rules, posting of those rules on a sign and providing patrons a written statement or brochure with those rules. This proposal will correct an inconsistency in the regulation between the required language specified for the rules and the sign and in the written brochure. The code provision which prescribes the exact statement that must be included in the written brochure is missing a phrase which is a required use rule and is mandated language in the code’s description of the required sign. The proposed amendment will eliminate this inconsistency by adding the missing phrase “ with at least one adult remaining on the pool deck” to the written statement/brochure.

Costs:

Cost to Regulated Parties:

Instructional Supervision:

Swimming pools that have not provided additional supervisory staff to supplement an instructor/lifeguard supervision of bathers during swimming instruction may have a cost increase to provide an additional qualified lifeguard or Level III supervisor. The number of facilities the change will impact is not known; however, many instructional activities occur at schools. Since 2003, the Department informed local health departments (LHD) about distractions associated with instructional duties and the need to provide a lifeguard or Level III supervisor in addition to the instructor/lifeguard.

The number of schools this change will impact is between 49 and 84. There are an estimated 420 pools operated by schools. In 2006, the Department surveyed and obtained a written statement from school superintendents which described the staffing that is provided at pools during various swimming activities. The statements showed that 336 school pools are currently compliant with the proposed change and will not have a cost impact for additional staff. Forty-nine school pools need additional staff in order to comply and thirty-five schools either submitted an incomplete survey form or none at all.

One possible method to comply with the proposed change is for a school to hire a substitute teacher at a per diem rate. The substitute teacher would provide Level III supervision. The per diem cost for substitute staff varies among school districts but ranges from \$40.00 to \$75.00 per day. Based on a 180 day school year, each affected school would incur an additional \$7,200 to \$13,500 expense.

Another option for compliance for both a school pool and a non-school operated pool is to hire an additional qualified lifeguard or individual meeting Level III qualifications to provide/assist with supervision. Salaries range from \$6.75 to \$12.00 per hour. Estimating that school pools are open for 8 hours a day for 180 days a year, an additional cost of between \$9,720 and \$17,280 plus benefits is estimated for each affected pool. The cost for a non-school pool is dependent upon the number of hours of instruction.

Schools and other pools may have no additional personnel costs by assigning existing staff to assist with surveillance during instructional activities, however, there will be a cost increase associated with certification of Supervision Level III staff in aquatic injury prevention and emergency response. The cost range for American Red Cross Lifeguard Management certification is estimated at between \$50.00 and \$150.00. Certification must be renewed every three years.

Level IV Supervision Written Statement/Brochure Requirements

The Department prints and makes available supplies of these brochures for facilities using Level IV supervision. For those facilities using Department supplied brochures there will be no cost associated with the change. Those swimming pools using Level IV supervision (generally hotels, motels and campgrounds) that provide their own brochures will incur a minimal cost to revise the written information provided to patrons. The change requires the addition of a 10-word sentence to the existing written statement or brochure. Facilities that have an existing supply of the written statement may apply for a variance from the requirement to obtain additional time to use up their existing supplies before revising and printing. A

variance is allowed by Section 6-1.6(a) of this subpart when the variance is consistent with the purpose and intent of the regulation and when there is practical difficulty or unnecessary hardship in immediately complying.

Cost to the Department of Health:

These proposed amendments would result in costs normally associated with printing and distributing the amended Code and written brochure estimated to be between \$5,500 and \$6,500.

Cost to State and Local Government:

There will be no additional costs associated with the revised Code. Local governments and school districts that operate a swimming pool may be affected as described in the cost to regulated parties section.

Local Government Mandates:

Pools operated by local governments will be required to comply with the requirements of the amended sections but the proposed amendments do not otherwise impose a new program duty or responsibility to any county, city, town, village, school district, fire district or special district. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

There is no new paperwork resulting from the amendments.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation.

Alternatives Considered:

One alternative considered to requiring a minimum of two staff during instruction was to require the use of a "buddy system" similar to that which is used at Children's Camps. This alternative was rejected because it does not provide an equivalent level of bather protection that is afforded by a person solely dedicated to pool supervision. Additionally, a buddy system may be difficult to implement in a school setting.

Another alternative was to not require the additional training for Level III staff in victim recognition, injury prevention and emergency response. This alternative was rejected because bather safety is compromised if staff used to provide assistance with surveillance of bathers in the water are not knowledgeable in victim recognition and injury prevention.

Consideration was given to either not requiring the additional statement to be added to the brochure or delaying implementation to a future date to allow pool operators to use up existing supplies of the worded brochure. These options were rejected because of the need to accurately inform patrons of the safety requirements so that safety is not jeopardized at Level IV Supervision swimming pools and to correct the inconsistency between the required poolside sign, operating requirements and required brochure.

Federal Standards:

Currently, no federal law governs the operation of swimming pools, and regulatory standards vary widely from state to state.

Compliance Schedule:

The requirement for Level III Supervision staff to possess aquatic injury prevention and emergency response training when assisting lifeguards during instructional activities shall take January 1, 2008. The other proposed amendments are to be effective upon publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

The number of small businesses and local governments the proposed changes will impact is not known. It was expected that the majority of pools that would be affected by the changes to instructional supervision would be located at the 420 schools that operate swimming pools; however, the Department surveyed all public school districts in the State and based on survey responses, determined that 336 are currently in compliance. Forty-nine school swimming pools, including 45 in New York City, were determined to require changes to comply. The impact could not be determined for 35 school pools that either did not return survey forms or returned incomplete survey forms.

Compliance Requirements:

Reporting and Recordkeeping:

There are no reporting requirements associated with the proposed amendments. Swimming pool operators must maintain lifeguard or Level III supervision certification records.

Other affirmative acts:

Instructional Supervision:

As a result of student drownings during school physical education classes, two amendments, which clarify and improve bather supervision during instructional activities, are proposed. One amendment eliminates existing code language that states an instructor who is also serving as the

required lifeguard is only required to have an additional lifeguard or Level III supervision when he/she "reasonably expected to be distracted" from lifeguard duties. This change is necessary because instructors' duties will always distract them from proper swimming pool surveillance and the previous code language was frequently misinterpreted. Often in schools, the physical education teacher that is responsible for instructing a class is also the qualified lifeguard responsible for providing direct supervision of bathers in the pool. Because the teacher has many responsibilities that can interfere with bather surveillance of the pool, bather safety is compromised.

Additionally, because the current criteria for Supervision Level III staff does not include training in victim recognition, injury prevention and emergency response, a second amendment adds a knowledge based training requirement for Supervision Level III staff to ensure bather safety is not lessened. The training provides Supervision Level III staff with knowledge necessary to effectively assist with supervision of bathers but does not include swimming and in water rescue skills. Swimming and in water rescue skills will continue to be provided by the instructor/lifeguard.

Level IV Supervision Written Statement/Brochure Requirements:

Supervision level IV (patron use rules and signage) is allowed by code for small shallow pools (less than 2000 square feet in surface area and less than 5 feet in depth) and Temporary Residences and Camp Grounds defined by Part 7 of this title. The requirements for use of supervision level IV include compliance with specified rules, posting of those rules on a sign and providing patrons a written statement or brochure with those rules. This proposal will correct an inconsistency in the regulation between the required language specified for the rules and the sign and in the written brochure. The code provision which prescribes the exact statement that must be included in the brochure is missing a phrase which is a required use rule and is mandated language in the code's description of the required sign. The proposed amendment will eliminate this inconsistency by adding the missing phrase "with at least one adult remaining on the pool deck" to the written statement/brochure requirement.

Professional Services:

Swimming pools that previously used a single instructor/lifeguard to supervise during swimming instruction, may need to reassign staff or hire an additional qualified lifeguard or Level III supervisor to supervise bathers.

Those swimming pools using Level IV supervision (generally hotels, motels and campgrounds) that produce and distribute their own brochures will need to revise the written information provided to patrons.

Compliance Costs:

Instructional Supervision:

Swimming pools that have not provided additional supervisory staff to supplement an instructor/lifeguard supervision of bathers during swimming instruction may have a cost increase to provide an additional qualified lifeguard or Level III supervisor. The number of facilities the change will impact is not known; however, many instructional activities occur at schools. Since 2003, the Department informed local health departments (LHD) about distractions associated with instructional duties and the need to provide a lifeguard or Level III supervisor in addition to the instructor/lifeguard.

The number of schools this change will impact between 49 and 84. There are an estimated 420 pools operated by schools. In 2006, the Department surveyed and obtained a statement from school superintendents which described the staffing that is provided at pools during various swimming activities. The statements showed that 336 school pools are currently compliant with the proposed change and will not have a cost impact. Forty-nine school pools need additional staff in order to comply and thirty-five schools submitted an incomplete survey form or none at all.

One possible method to comply with the change is for a school to hire a substitute teacher, at a per diem rate. The substitute teacher would provide Level III supervision. The per diem cost for substitute staff varies among school districts but ranges from \$40.00 to \$75.00 per day. Based on a 180 day school year, each affected school would incur an additional \$7,200 to \$13,500 expense.

Another option for both a school pool and a non-school operated pool is to hire an additional qualified lifeguard or individual meeting Level III qualifications, to provide/assist with supervision. Salaries range from \$6.75 to \$12.00 per hour. Estimating that school pools are open for 8 hours a day for 180 days a year, an additional cost of between \$9,720 and \$17,280 plus benefits is estimated for each affected pool. The cost for a non-school pool is dependent upon the number of hours of instruction.

Schools and other pools may have no additional personnel costs by assigning existing staff to assist with surveillance during instructional

activities, however, there will be a cost increase associated with certification of Supervision Level III staff in aquatic injury prevention and emergency response. The cost range for American Red Cross Lifeguard Management certification is estimated at between \$50.00 and \$150.00. Certification must be renewed every three years.

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Economic and Technological Feasibility:

The amendment is technologically feasible because its only requires simple word processing to amend existing brochures. There are no other changes requiring the use of technology.

The proposal is believed to be economically feasible because the expense to comply will be minimal for each regulated swimming pool.

Minimizing Adverse Economic Impact:

The proposed rule amends the standards for swimming pools to minimize risk to the public health. A waiver allowing alternative arrangements that do not meet the provisions of the Subpart but protect the health and safety of the patrons and the public can be granted. Alternatively, should this rule have a substantial adverse impact on a particular facility, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance. Although exemption from the proposed requirements was considered for small businesses and local governments, the option was rejected because public safety would be compromised.

Small Business Participation:

On November 21, 2003 and November 17, 2006, presentations which included discussion of the proposed changes to bather supervision during instructional activities was given to the New York State Association for Health, Physical Education, Recreation and Dance. Additionally, the changes were discussed at the 2004 New York State Public High School Athletic Association, Inc. meeting.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Swimming pools exist in all 44 counties that have population less than 200,000 and the nine counties identified to have townships with a population density of fewer than 150 persons or less per square mile. The majority of swimming pools are located in urban areas.

Reporting and Recordkeeping and Other Compliance Requirements:

There are no reporting requirements associated with the proposed amendments. Swimming pool operators must maintain lifeguard or Level III supervision certification records.

Instructional Supervision:

As a result of student drownings during school physical education classes, two amendments, which clarify and improve bather supervision during instructional activities, are proposed. One amendment eliminates existing code language that states an instructor who is also serving as the required lifeguard is only required to have an additional lifeguard or Level III supervisor when he/she is "reasonably expected to be distracted" from lifeguard duties. This change is necessary because instructors' duties will always distract them from proper swimming pool surveillance and the previous code language was frequently misinterpreted. Often in schools, the physical education teacher that is responsible for instructing a class is also the qualified lifeguard responsible for providing direct supervision of bathers in the pool. Because the teacher has many responsibilities that can interfere with surveillance of the pool, bather safety is compromised.

Additionally, because the current criteria for Supervision Level III staff does not include training in victim recognition, injury prevention and emergency response, a second amendment adds a knowledge based training requirement for Supervision Level III staff to ensure bather safety is not lessened. The training provides Supervision Level III staff with knowledge necessary to effectively assist with supervision of bathers but does not include swimming and in water rescue skills. Swimming and in water rescue skills will continue to be provided by the instructor/lifeguard.

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than 5 feet in depth) and Temporary Residence and Camp Grounds defined by Part 7 of this title. The requirements for use of supervision level IV include compliance with specified rules, posting of those rules on a sign and providing patrons a written statement or brochure with those rules. The proposal will correct an inconsistency in the regulation between the required language specified for the rules and the sign and in the written brochure. The code provision which prescribes the exact statement that must be included in the written brochure is missing a phrase which is a required use rule and is mandated language in the code's description of the required sign. The proposed amendment will eliminate this inconsistency by adding the missing phrase "with at least one adult remaining on the pool deck" to the written statement/brochure requirement.

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Those swimming pools using Level IV supervision (generally hotels, motels and campgrounds) that produce and distribute their own brochures will need to revise the written information provided to patrons.

Costs:

Cost to Regulated Parties:

Instructional Supervision:

Swimming pools that have not provided additional supervisory staff to supplement an instructor/lifeguard supervision of bathers during swimming instruction may have a cost increase to provide an additional qualified lifeguard or Level III supervisor. The number of facilities the change will impact is not known; however, many instructional activities occur at schools. The Department has informed local health departments (LHD) about distractions associated with instructional duties and the need to provide a lifeguard or Level III supervisor in addition to the instructor/lifeguard since 2003.

The number of schools this change will impact is between 49 and 84. There are an estimated 420 pools operated by schools. In 2006, the Department surveyed and obtained a written statement from school superintendents which described the staffing that is provided at pools during various swimming activities. The survey showed that 336 school pools are currently compliant with the proposed change and will not have a cost impact. Forty-nine school pools need additional staff in order to comply and thirty-five schools submitted an incomplete survey form or none at all.

One possible method to comply with the change is for a school to hire a substitute teacher, at a per diem rate. The substitute teacher would provide Level III supervision. The per diem cost for substitute staff varies among school districts but ranges from \$40.00 to \$75.00 per day. Based on a 180 day school year, each affected school would incur an additional \$7,200 to \$13,500 expense.

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Minimizing Adverse Economic Impact on Rural Areas:

The proposed rule amends the standards for swimming pools to minimize risk to the public health. A waiver allowing alternative arrangements that do not meet the provisions of the Subpart but protect the health and

safety of the patrons and the public can be granted. Alternatively, should this rule have a substantial adverse impact on a particular facility, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance. Although exemption from the proposed requirements was considered for rural areas, the option was rejected because public safety would be compromised.

Rural Area Participation:

On November 21, 2003 and November 17, 2006, presentations which included discussion of proposed changes to bather supervision during instructional activities was given to the New York State Association for Health, Physical Education, Recreation and Dance. Additionally, the proposed changes were discussed at the 2004 New York State Public High School Athletic Association, Inc. meeting.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The instructional supervision requirement may in fact increase employment opportunities

Insurance Department

EMERGENCY RULE MAKING

Market Stabilization Mechanisms for Individual and Small Group Market

I.D. No. INS-29-07-00002-E

Filing No. 649

Filing date: June 27, 2007

Effective date: June 27, 2007

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

Action taken: Amendment of sections 361.5 and 361.7(a), renumbering sections 361.6-361.7 to 361.7-361.8 and addition of new section 361.6 to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3233; and L. 1992, ch. 501, L. 1995, ch. 504

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

Specific reasons underlying the finding of necessity: The first filing for the new pooling methodology was Nov. 10, 2006, and the second filing was Jan. 31, 2007.

Subject: Market stabilization mechanisms for individual and small group market.

Purpose: To create a new market stabilization process in the individual and small group market; and share among plans substantive cost variations attributable to high cost medical claims.

Text of emergency rule: The title of Section 361.5 is amended to read as follows:

Section 361.5 Pooling of variations in costs attributable to variations in specified medical conditions (SMC) beginning in 1999 through 2006.

Section 361.5 is hereby amended to add a new subdivision (k) to read as follows:

(k) Reporting requirements, payments to the pools, or collections from the pools under this section shall not be required in 2005 or 2006.

Sections 361.6 and 361.7 are hereby renumbered 361.7 and 361.8 and a new section 361.6 is added to read as follows:

361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 for individual and small group policies, other than Medicare supplement and Healthy New York policies.

(a) In each pool area a risk adjustment pool is established in connection with individual and small group health insurance policies, other than Medicare supplement insurance policies and Healthy New York health insurance policies. Each pool shall operate independently; that is, all calculations and payments described below are made for each pool independently of any other pool.

(b) The annual funding amount for all pool areas combined is as follows:

(1) \$80,000,000 for 2007;

(2) \$120,000,000 for 2008; and

(3) \$160,000,000 for 2009 and each calendar year thereafter.

(c) The annual funding amount for each pool area is in proportion to the annualized premiums in that pool area. For 2007, the amounts are as specified in the table below. For 2008 and each calendar year thereafter, each pool participant shall provide to the superintendent annualized premium information on or before January 31. The superintendent shall advise carriers of the funding amount for each pool area within sixty days of receipt of annualized premium information from all carriers.

Pool Area	Percentage of Premiums	2007 Pool Area Funding Amount
Albany	5.5%	\$4,400,000
Buffalo	7.4%	\$5,920,000
Mid-Hudson	5%	\$4,000,000
NYC	69.5%	\$55,600,000
Rochester	5.1%	\$4,080,000
Syracuse	4.8%	\$3,840,000
Utica/Watertown	2.7%	\$2,160,000
Total	100%	\$80,000,000

(d)(1) Each carrier's share of the total funding payable to or from the pools shall be determined based on the carrier's high cost claims in its areas of operation.

(2) In order to implement the phase in of the new specified medical condition pooling process, on or before November 10, 2006 each carrier shall report to the superintendent its annualized premium amount as of December 31, 2005 and its cumulative calendar year claims paid in 2005 for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. The superintendent will provide carriers with an estimate of potential pool receivables or liabilities using this 2005 data for advisory purposes only.

(3) Each following year, beginning in 2007, on or before January 31, each carrier shall report to the superintendent its annualized premium amount as of December 31 of the preceding year and its cumulative calendar year claims paid in the preceding year for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. In 2007, the superintendent will provide carriers with a second estimate of potential pool receivables or liabilities using 2006 data, for advisory purposes only. Payments to the pools, or collections from the pools, shall be required beginning in 2008 and shall be based upon the data from the preceding calendar year.

(4) Cumulative calendar year claims paid shall include the total of all claim payments on behalf of an insured individual from January 1 through December 31 of the preceding year, regardless of when the services were provided.

(5) Cumulative calendar year claims paid shall include payments for hospital and medical services, prescription drug payments, capitation payments, and regional covered lives assessments paid pursuant to section 2807-t of the Public Health Law or percentage surcharges paid pursuant to section 2807-j or section 2807-s of the Public Health Law. Carriers that include the covered lives assessments shall convert the family covered lives assessment into a per member assessment component in order to be included with claims expenses attributable to any one member.

(6) Cumulative calendar year claims paid shall not include amounts paid in satisfaction of the 24 percent surcharge requirement set forth in section 2807-j(2)(b)(i)(B) of the Public Health Law or interest paid out by a carrier pursuant to section 3224-a(c) of the Insurance Law.

(7) Each carrier's submission shall be signed by an officer of the carrier certifying that the information is accurate.

(8) If a carrier makes a submission after January 31 and the carrier is a pool payer, the carrier's payment into the pool will be increased by one percent interest per month. If a carrier makes a submission after January 31 and the carrier is a pool receiver, the carrier's distribution will be reduced by one percent per month.

(e) The superintendent shall calculate each carrier's share of the total funding payable to or from the pools pursuant to the example in subdivision (i) of this section for each pool area as follows:

(1) Identify the total claims paid by each carrier for the following types of policies: individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, other than Medicare supplement and Healthy New York insurance policies.

(2) Identify the total claims paid in excess of \$20,000 for each insured by type of policy.

(3) For each carrier for each type of policy, divide the claims paid in excess of \$20,000 by the total claims paid (the amount specified in paragraph (2) of this subdivision divided by the amount specified in paragraph (1) of this subdivision) to determine the high cost claim ratio.

(4) Calculate the average high cost claim ratio for all carriers for all types of policies combined and multiply that ratio by the total claims paid for each carrier for each type of policy (a carrier's amount specified in paragraph (1) of this subdivision multiplied by the average high cost claim amount specified in paragraph (3) of this subdivision.)

(5) Subtract the amount calculated in paragraph (4) of this subdivision from the amount in paragraph (2) of this subdivision for each carrier for each type of policy to determine the adjustment needed to equalize high cost claims and determine if the carrier is a net contributor or receiver.

(6) Sum the net contributions of all carriers who are net contributors in the pool area to determine the total net contribution.

(7) Divide the pool area funding amount by the total of paragraph (6) of this subdivision and multiply by the amount identified for each carrier for each type of policy in paragraph (5) of this subdivision to determine the carrier's net pool contribution or distribution.

(f) Billings will be done by the superintendent beginning in 2008 within thirty days of receipt of submissions from all carriers, and payments will be due from carriers within five business days from the date billed. Payments made after the due date shall include interest at a rate of one percent per month. Subsequent to the billing date, but within the calendar year, carrier data that formed the basis of the billing will be audited. In the event audits necessitate post-billing adjustments, such adjustments will be charged or credited in the next year's billing or distribution. Additional payments due from any carrier whose data errors caused it to underpay shall include a one percent interest charge from the original due date.

(g) A carrier shall, with respect to distributions from the pools attributable to each type of policy, as determined in paragraph (7) of subdivision (e) of this section, without reduction for contributions owed on other types of policies:

(1) refund the distributions directly to insureds based upon the type of policy that caused the payments to be received without consideration of minimum loss ratio provisions; or

(2) submit a detailed plan to the superintendent for approval:

(i) demonstrating how the distribution will be applied to reduce future premium rates for the type of policy whose insureds caused the payments to be received, or

(ii) providing a detailed explanation as to how the distribution was considered in the development of premium rates for that year.

(h) Claim Submission Form.

Claims Paid From January 1 – December 31, ()

Carrier: _____

Pool Area: _____

Total annualized premium for individual standardized direct payment health maintenance organization (HMO) policies, individual standardized direct payment point of service (POS) policies, other individual health insurance policies, and small group policies: _____

Cumulative	Direct	Direct	Direct	Small	Total
	Payment	Payment	Payment	Group	
Listed Amounts	HMO	POS	Other		
(Attachment Point)					
ZERO					
\$10,000					
\$15,000					
\$20,000					
\$25,000					
\$30,000					
\$35,000					
\$40,000					
\$45,000					
\$50,000					

- \$60,000
- \$70,000
- \$80,000
- \$90,000
- \$100,000

Instructions:

* Do not include Medicare Supplement Policies or Healthy New York Policies.

** For each insured determine the cumulative claims paid from January 1 through December 31 and report the total claims paid for all insureds for each type of policy listed above.

***At each dollar level (Attachment Point), report all claims paid over that attachment point level amount from January 1 through December 31 for any insured. Cumulative total claims paid above the ZERO attachment point level would equal the total claims paid by the carrier for all insureds for the period. At the \$10,000 attachment point level, the amount would equal the sum of all claim amounts exceeding the \$10,000 attachment point level for any insured from January 1 through December 31. (Example: For an insured with \$17,000 of cumulative total claims paid in the calendar year, \$17,000 would be included in the zero level attachment point total, \$7,000 would be included in the \$10,000 level attachment point total, and \$2,000 would be included in the \$15,000 attachment point total.)

(i) Chart for calculation of pool amounts.

	1	2	3	4	5	6
Albany Region Total	Claims Paid	Claims Paid in Excess of \$20,000	High Cost Claim Ratio (Column 2 Divided by Column 1)	Claims Paid Multiplied by Average High Cost Claim Ratio (Column 1 Multiplied by Column 3 Average)	Adjustment to Equalize High Cost Claims (Column 2 Minus Column 4)	Pool Amount Owed or Receivable (Pre-determined Total Pool Amount Divided by Column 5 Total Net Contributions of All Net Contributors Multiplied by Column 5)

Carrier A
 Dir Pay HMO
 Dir Pay POS
 Dir Pay Other
 Small Group
 Carrier A
 Net
 Contribution
 or
 Distribution
 Carrier B
 Dir Pay HMO
 Dir Pay POS
 Dir Pay Other
 Small Group
 Carrier B
 Net
 Contribution
 or
 Distribution
 Total Net
 Contributions
 All Net
 Contributors
 Total Net
 Distributions
 All Net
 Receivers

Section 361.6 is renumbered to be 361.7 and the opening paragraph of subdivision (a) is amended to read as follows:

361.7(a) The pools shall be administered either directly by the superintendent, or in conjunction with a firm, performing at least the following functions:

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 September 24, 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 fifth amendment to 11 NYCRR 361 is derived from Sections 201, 301, 1109, 3233 and Chapter 501 of the Laws of 1992 and Chapter 504 of the Laws of 1995.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law, as well as effectuate any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise make regulations.

Section 1109 authorizes the Superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization and its subscribers.

Section 3233 authorizes the Superintendent to promulgate regulations to create a pooling process involving insurer contributions to, or receipts from, a fund designed to share the risk of or equalize high cost claims with respect to individual and small group health insurance.

Chapter 501 of the Laws of 1992 amended the insurance law and public health law to require that individual and small group health insurance be made available on an open enrollment basis; community rating of individual and small group health insurance policies; portability of health insurance coverage; continuation of hospital, surgical or medical expense insurance; and that the Superintendent promulgate regulations to assure an orderly implementation and ongoing operation of open enrollment and community rating.

Chapter 504 of the Laws of 1995 amended the insurance law and the public health law to establish standardized direct payment contracts for individual health insurance and to provide that regulations promulgated by the Superintendent shall include only reinsurance or a pooling process involving insurer or health maintenance organization contributions to, or receipts from, a fund which shall be designed to share the risk of high cost claims or the claims of high cost persons.

2. Legislative objectives: The statutory sections cited above provide a framework for the establishment of a market stabilization process in the individual and small group health insurance markets. The proposed amendment to Regulation 146 is consistent with legislative objectives in that it would effectuate the Legislature's direction in Section 3233 to establish a pooling process involving health maintenance organization and insurer contributions to, or receipts from, a fund that shall be designed to share the risk of or equalize high cost claims or claims of high cost persons, and to protect insurers and health maintenance organizations from disproportionate adverse risks of offering coverage to all applicants.

3. Needs and benefits: The proposed amendment will modify the pooling methodology established in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) to provide a simplified approach and to increase uniformity and consistency in the methodologies used by insurers and health maintenance organizations when determining their contributions and/or distributions from the pools, and should help insurers and health maintenance organizations avoid reporting errors. The proposed amendment is needed because of the widely differing methodologies used by insurers and health maintenance organizations, and the inconsistencies and resulting confusion as to how to apply the distributions and/or contributions to premium rates.

This amendment is the result of comments and suggestions received by the Department from health maintenance organizations and insurers with regard to the current market stabilization pools. As a result of the comments and suggestions, the current market stabilization pools are being phased-out. Payments, collections and data reports were not required in 2005 or 2006, and the new pooling methodology will be transitioned into operation over a three year period. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million. This phase-in will ensure that health maintenance organizations and insurers have sufficient time to account for the impact of this amendment.

Comparable to all prior pooling methodologies established pursuant to Section 3233 of the Insurance Law, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies in order share the risk of, or equalize, high cost claims or high cost persons. The pooling of individual and small group policies is necessary to provide meaningful distribution of high cost persons and claims across the community rated markets.

4. Costs: This amendment imposes no compliance costs upon state or local governments. The amendment does not impose any significant addi-

tional compliance costs to insurers or health maintenance organizations. Insurers and health maintenance organizations may have to modify their internal policies and procedures for compliance with the new pooling methodology, and if insurers or health maintenance organizations fail to comply with statutory or regulatory pooling requirements, a penalty could be imposed. In addition, similar to the previous pooling methodology, insurers and health maintenance organizations with healthier lives will have to pay money into the market stabilization pools, and those with unhealthy lives will receive money from the pools. There will be a cost to insurers and health maintenance organizations with healthier lives; however, the purpose of any market stabilization mechanism is to share risk and equalize claim costs. There should be no additional costs to the Insurance Department, as existing personnel are available to assist insurers and health maintenance organizations with the transition to the new market stabilization process.

5. Local government mandates: The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork: The proposed amendment imposes new reporting requirements. However, insurers and health maintenance organizations are currently reporting similar information to the Superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Therefore, this proposed amendment should not create more paperwork for the insurers and health maintenance organizations than is currently in place.

7. Duplication: Section 3233 directs the Superintendent of Insurance to promulgate regulations to create a pooling process to establish stabilization in the individual and small group markets. There is no duplication with federal or state laws.

8. Alternatives: The Insurance Department has met extensively with the Health Plan Association and the Conference of BlueCross BlueShield Plans to discuss this amendment. A suggestion was made to take payments from the Direct Payment Stop Loss Funds into consideration when determining amounts owed or received under the new pooling methodology. The Direct Payment Stop Loss Funds were established in 1999 pursuant to Sections 4321-a and 4322-a of the Insurance Law, which establishes a separate statutory mandate from Section 3233 of the Insurance Law, which first provided for the establishment of the market stabilization pools in 1992. The Direct Payment Stop Loss Funds were created to provide additional state subsidies to the individual direct payment market, and were not meant to replace the market stabilization pools. Although the previous market stabilization pools did not take the direct payment stop loss recoveries into consideration, the Department reviewed the suggestion of taking the payments from the Direct Payment Stop Loss Funds into consideration under this proposed amendment. The Department determined that if the stop loss recoveries were taken into consideration, the standardized individual HMO policies could become payors, which would undermine the intent of Section 3233 of the Insurance Law. That statute is meant to equalize the risk of high cost persons throughout the individual and small group markets by encouraging each HMO and insurer to insure high cost persons (who are mostly found in the individual direct payment market). If direct payment policies become payers, HMOs could be discouraged from insuring high cost persons – a circumstance that would run counter to the statutory intent.

Another suggestion was made to increase the claim threshold from \$20,000 to \$100,000. The Insurance Department found that the risk sharing and market stabilization would be significantly diminished, by up to 80%, if the claim threshold were increased. If this were to occur, the risk adjustment would be so nominal that the statutory requirement for risk adjustment could not be accomplished.

Interested parties also expressed concern that when the individual and small group policies are pooled together, that the market stabilization pools could involve the small group market subsidizing the individual market. The Department has previously pooled individual and small group policies together under all prior pooling methodologies established pursuant to Section 3233 of the Insurance Law in order to accomplish the legislative goals. Moreover, if individual and small group coverage were not pooled, there would not be appropriate risk adjustment in the individual market.

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

10. Compliance schedule: The provisions of this amendment will take effect immediately. However, implementation will be gradual, with the market stabilization pools reaching full funding only after three years. Insurers and health maintenance organizations were expected to submit initial reports to the Superintendent by November 10, 2006 and January 31,

2007 for advisory purposes only, and payments under the new pooling process will begin in 2008. The Insurance Department has had several meetings with representatives of insurers and health maintenance organizations to discuss this amendment, and insurers and health maintenance organizations should be aware of the requirements established by this amendment.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Based upon information provided by these companies in annual statements filed with the Insurance Department, HMOs and insurers licensed to do business in New York do not fall within the definition of "small business" found in Section 102(8) of the State Administrative Procedures Act because none of them are both independently owned and have under 100 employees.

Some of the small businesses in New York purchase health insurance from HMOs and insurers. This amendment modifies and simplifies the current pooling methodology for the individual and small group health insurance markets established by the Fourth Amendment to Regulation 146. Similar to all prior pooling methodologies, the new pooling methodology establishes a risk adjustment mechanism so that insurers covering persons with higher cost claims will receive monies from the market stabilization pools, and insurers covering persons with lower cost claims will pay money into the pools. Also similar to all prior pooling methodologies, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies together in order share the risk of or equalize high cost claims or high cost persons, as required by Section 3233 of the Insurance Law. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. In order to mitigate the initial impact of the amendment, the Department has established a gradual three-year implementation period until the pools become fully funded. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million. This amendment does not apply to or affect local governments.

2. Compliance requirements: This amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

3. Professional services: Small businesses or local governments should not need professional services to comply with the amendment.

4. Compliance costs: This amendment will not impose any compliance costs upon small businesses or local governments.

5. Economic and technological feasibility: Small businesses or local governments should not incur an economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: This amendment simplifies the market stabilization methodology for individual and small group coverage established by the Fourth Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance coverage offered by HMOs and insurers, similar to the Fourth Amendment to Regulation 146, and should not impose any adverse or disparate impact. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. The amendment also is being transitioned into full effect over three years in order to moderate any impact.

7. Small business and local government participation: These regulations are directed at HMOs and insurers licensed 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 Act. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. That notice was intended to provide small businesses with the opportunity to participate in the rulemaking process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Rural Area Flexibility Analysis

1. Effect of the rule: This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Insurers and HMOs to which the amendment applies do business in all counties of the state, including rural areas as defined under State Administrative Procedure Act Section 102(13). This amendment may also

affect small business and individuals that purchase health insurance coverage, some of which are located in rural areas across the state. This amendment modifies and simplifies the current pooling methodology for the individual and small group health insurance markets established by the Fourth Amendment to Regulation 146. Similar to all prior pooling methodologies, the new pooling methodology establishes a risk adjustment mechanism so that insurers covering persons with higher cost claims will receive monies from the market stabilization pools, and insurers covering persons with lower cost claims will pay money into the pools. Also similar to all prior pooling methodologies, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies together in order share the risk of or equalize high cost claims or high cost persons, as required by Section 3233 of the Insurance Law. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. In addition, persons covered under the individual standardized direct payment policies will on average likely see a decrease in their premiums. In order to mitigate the initial impact of the amendment, the Department has established a gradual three-year implementation period until the pools become fully funded. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed amendment imposes new reporting requirements for insurers and health maintenance organizations. However, insurers and health maintenance organizations are currently reporting similar information to the Superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Therefore, this proposed amendment should not create more paperwork, recordkeeping or other compliance requirements or professional services for insurers and health maintenance organizations than are currently in place.

3. Costs: As under all prior pooling methodologies, some small businesses will see a premium reduction, while others will see a nominal increase. These small businesses may be located in rural or urban areas across the state. Individuals covered under the standardized direct payment policies will likely see a reduction in their premiums. These individuals may be located in rural or urban areas across the state.

4. Minimizing adverse impact: This amendment simplifies the market stabilization methodology for individual and small group coverage established by the Fourth Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance coverage offered by HMOs and insurers, similar to the Fourth Amendment to Regulation 146. The impact on small businesses and individuals who purchase health insurance in the individual or small group market and who may be located in rural areas, should be comparable to the impact on small businesses or individuals who are located in urban areas. The amendment is being transitioned into full effect over the course of three years in order to mitigate any impact.

5. Rural area participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, which do businesses in every county in New York. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. That notice was intended to provide small businesses or individuals who are located in rural areas with the opportunity to participate in the rulemaking process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Job Impact Statement

This amendment to Regulation 146 will not adversely impact job or employment opportunities in New York. The proposed amendment is likely to have no measurable impact on jobs. Insurers and health maintenance organizations will need to annually report to the Superintendent their annualized premium amount and their cumulative calendar year claims paid. However, it is anticipated that such responsibilities will be handled by existing personnel because these reporting requirements are similar to the existing reporting requirements set forth in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Costs to the Insurance Department will also be minimal, as existing personnel are available to assist insurers and health maintenance organizations in implementing the new pooling methodology.

Department of Labor

NOTICE OF ADOPTION

Public Employees Occupational Safety and Health Standards

I.D. No. LAB-16-07-00003-A

Filing No. 656

Filing date: June 28, 2007

Effective date: July 18, 2007

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

Action taken: Amendment of section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a4(a)

Subject: Public employees occupational safety and health standards.

Purpose: To incorporate by reference into New York State occupational safety and health standards, those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Feb. 14, 2007.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-16-07-00003-P, Issue of April 18, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Joan A. Connell, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Rm. 508, Albany, NY 12240, (518) 457-7069, e-mail: joan.connell@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

EMERGENCY RULE MAKING

Child and Family Clinic Plus Program

I.D. No. OMH-29-07-00012-E

Filing No. 657

Filing date: June 29, 2007

Effective date: June 29, 2007

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

Action taken: Amendment of Part 587 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: These amendments provide authority to establish Child and Family Clinic Plus, a program authorized by the 2006-2007 enacted budget. Failure to initiate this program immediately would result in children and their families being without services necessary to their health, safety and general welfare.

Subject: Child and Family Clinic Plus.

Purpose: To establish the Child and Family Clinic Plus Program.

Text of emergency rule: Subdivision (b) of Section 587.4 is amended to add a new definition (1) and existing definitions (1) through (5) are renumbered (2) through (6) to read as follows:

587.4 (b) Program definitions.

(1) *Child and Family Clinic Plus provider means a licensed clinic that has been approved by the Office of Mental Health to provide Child and Family Clinic Plus services.*

(2) *Off-site locations, for purposes of providing outpatient services and reimbursement, [are] means any sites in the community where a recipient may require services.*

[(2)] (3) *Program capacity shall mean the number of recipients who can be on site at a given time.*

[(3)] (4) *Program space means discrete space dedicated to the purpose of the outpatient program and includes all space used by recipients enrolled in the program.*

[(4)] (5) *Provider of service means the entity which is responsible for the operation of a program. Such entity may be an individual, partnership, association or corporation. For purposes of this Part, unless otherwise noted, the term also applies to a psychiatric center or institute operated by the Office of Mental Health.*

[(5)] (6) *Satellite location of a primary program means a physically separate adjunct site to a certified clinic treatment program, continuing day treatment program, day treatment program serving children or intensive psychiatric rehabilitation treatment program provides either a full or partial array of outpatient services on a regularly and routinely scheduled basis (full or part time).*

Subdivision (c) of Section 587.4 is amended to add new definitions (5), (7), (10), (13) and (16), and to renumber existing definitions (5) as (6), (6) as (8), (7) as (9), (8) as (11), (9) as (12), (10) as (14), (11) as (15) and (12) through (29) as (17) through (34) respectively, to read as follows:

587.4 (c) Service definitions.

(1) *Activity therapy means therapy designed to assist a recipient in developing the functional skills and social and environmental supports needed to function more successfully in current or intended life environments (i.e., living, learning, working and social). Such therapy should provide an opportunity for a recipient to practice the skills and build or sustain the supports needed to improve functioning.*

(2) *Assessment is the continuous clinical process of identifying an individual's behavioral strengths and weaknesses, problems and service needs, through the observation and evaluation of the individual's current mental, physical and behavioral condition and history. The assessment shall be the basis for establishing a diagnosis, treatment plan or psychiatric rehabilitation service plan.*

(3) *Case management services are the process of linking the individual to the service system and monitoring the provision of services with the objective of continuity of care and service. Case management includes the following components:*

(i) *Linking. The process of referring the individual to all required services and supports as specified in the individual service plan.*

(ii) *Case-specific advocacy. The process of interceding on behalf of the individual to gain access to needed services and supports.*

(iii) *Monitoring. The process of observing the individual to assure that needed services and supports are received.*

(4) *Carved-out services are those specialized services that are not included in the benefit package of a managed care provider, other than a duly authorized managed special care provider, for all current and future managed care enrollees, regardless of aid category. Such services are long term services for individuals with chronic illnesses and include the following:*

(i) *Day Treatment Programs;*

(ii) *Continuing Day Treatment Programs;*

(iii) *Intensive Psychiatric Rehabilitation Programs;*

(iv) *Partial Hospitalization;*

(v) *Comprehensive Medicaid Case Management (CMCM);*

(vi) *Rehabilitation services provided to a resident of OMH rehabilitation treatment services and family based treatment programs;*

(vii) *Services provided to children with serious emotional disturbances in designated clinics.*

(5) *Child and Family Plus Services are Mental Health Screening, Comprehensive Assessment, In-Home Services and Evidence-Based Treatment.*

(6) *Clinical support services are services provided to collaterals, by at least one therapist, with or without recipients for the purpose of providing resources and consultation for goal oriented problem solving, assessment of treatment strategies and provision of skill development to assisting the recipient in management of his or her illness.*

(7) *Comprehensive Assessment is an assessment that follows the American Academy of Child and Adolescent Psychiatry practice parameters for comprehensive assessment and includes the regular and methodical use of psychometric tools. This will include collecting the recipient's mental health history, and any current signs and symptoms of mental illness or emotional disturbance, identification of child and family strengths, and the assessment of the data to determine the recipient's mental health status and need for treatment.*

[(6)](8) *Crisis intervention services are activities and interventions, including medication and verbal therapy, designed to address acute dis-*

tress and associated behaviors when the individual's condition requires immediate attention.

[(7)] (9) Discharge planning is the process of planning for termination from a program or identifying the resources and supports needed for transition of an individual to another program and making the necessary referrals, including linkages for treatment, rehabilitation and supportive services based on assessment of the recipient's current mental status, strengths, weaknesses, problems, service needs, the demands of the recipient's living, working and social environment, and the client's own goals, needs and desires.

[(10)] (10) *Evidence-Based Treatment is the application of therapeutic and or psychopharmacological approaches that have been scientifically proven to be effective in the treatment of specific emotional disturbances.*

[(8)] (11) Family treatment means therapeutic interventions designed to treat the recipient's psychiatric condition (whether the recipient is an adult or a minor) to address family issues that have a direct impact on the symptoms experienced by the recipient, and to promote successful problem solving, communication, and understanding between a recipient and family members as it relates to the recipient's symptoms, treatment, and recovery.

[(9)] (12) Health screening service is the gathering of data concerning the recipient's medical history and any current signs and symptoms, and the assessment of the data to determine his or her physical health status and need for referral for noted problems. The data may be provided by the recipient or obtained with his or her participation. The assessment of the data shall be done by a nurse practitioner, physician, physician's assistant, psychiatrist or registered professional nurse. The assessment of physical health status shall be integrated into the patient's treatment plan.

[(13)] (13) *In-Home Services are clinic services of a minimum duration of 30 minutes provided by a qualified mental health professional to a child and/or his or her family, pursuant to his or her treatment plan, within the child's or family's living environment.*

[(10)] (14) Medication therapy means prescribing and/or administering medication, reviewing the appropriateness of the recipient's existing medication regimen through review of records and consultation with the recipient and/or family or caregiver, and monitoring the effects of medication on the recipient's mental and physical health.

[(11)] (15) Medication education means providing recipients with information concerning the effects, benefits, risks and possible side effects of a proposed course of medication.

[(16)] (16) *Mental Health Screening is a broad-based approach to identify children and adolescents with emotional disturbances and intervene at the earliest possible opportunity.*

[(12)] (17) Pre-admission screening is the initial face-to-face process of contacting, interviewing and evaluating a potential recipient of mental health services to determine the individual's need for services.

[(13)] (18) Psychiatric rehabilitation goal setting is the process by which a recipient selects a specific environment in which he or she intends to live, work, learn, and/or socialize. The psychiatric rehabilitation goal identifies a specific environment, specific time frames, and is mutually agreed upon by the recipient and the staff.

[(14)] (19) Psychiatric rehabilitation treatment means therapeutic interventions designed to increase the functioning of a person with psychiatric disabilities so that he or she can succeed in a community environment of living, working, learning and social relationships.

[(15)] (20) Psychiatric rehabilitation functional and resource assessment is the process by which the recipient and practitioner develop an understanding of the skills the recipient can and cannot perform and the social and environmental resources that are available related to achieving the recipient's psychiatric rehabilitation goals.

[(16)] (21) Psychiatric rehabilitation readiness determination means an interview and observation process which evaluates rehabilitation readiness based on a recipient's perceived need, motivation, and awareness of the process involved in making a change in his or her life.

[(17)] (22) Psychiatric rehabilitation service planning is the process of designing and continuously revising an individualized program to assist the patient in obtaining and maintaining a psychiatric rehabilitation goal.

[(18)] (23) Psychiatric rehabilitation skills and resource development is the process of improving a recipient's use of skills and arranging for or adapting social and environmental resources necessary to achieve a psychiatric rehabilitation goal.

[(19)] (24) Psychiatric rehabilitation support services are consultation and technical assistance services provided to collaterals, by at least one therapist, with or without recipients. The purpose of this service is to

enhance the capacity of the collateral to serve as a resource in assisting the recipient to achieve or maintain his or her psychiatric rehabilitation goal.

[(20)] (25) Referral means a post-assessment planning activity with the objective of referring or directing an individual to a program providing the appropriate services.

[(21)] (26) Rehabilitation readiness development is the process of building a recipient's skills to proceed with the rehabilitation goal setting process. This service might include confidence building activities, self-awareness activities, or trial visits to various environments.

[(22)] (27) Social training is an activity whose purpose is to assist a child in the acquisition or development of age-appropriate social and interpersonal skills.

[(23)] (28) Socialization is an activity whose purpose is to develop, improve or maintain a child's capacity for social or recreational involvement by providing age-appropriate opportunities for development, application and practice of social or recreational skills.

[(24)] (29) Supportive skills training is the development of physical, emotional and intellectual skills needed to cope with mental illness and the performance demands of personal care and community living activities. Such training is provided through direct instruction techniques including explanation, modeling, role playing and social re-enforcement interventions.

[(25)] (30) Symptom management, as a service for adults, means the development and provision of appropriate skills and techniques specific to the individual recipient's condition to enable him or her to recognize the onset of psychiatric symptoms and engage in activities designed to prevent, manage, or reduce such symptoms.

[(26)] (31) Symptom management, as a service for children, means a set of skill building interventions, adjunct to verbal therapy.

[(27)] (32) Task and skill training is a nonvocational activity whose purpose is to enhance a child's age-appropriate skills necessary for functioning in home, school and community settings. Task and skill training activities shall include, but not be limited to, personal care, budgeting, shopping, transportation, use of community resources, time management, and study skills.

[(28)] (33) Treatment planning is the process of developing, evaluating and revising an individualized course of treatment based on an assessment of the recipient's diagnosis, behavioral strengths and weaknesses, problems, and service needs.

[(29)] (34) Verbal therapy means providing goal oriented therapy including psychotherapy, behavior therapy, family and group therapy and other face-to-face contacts between staff and recipients designed to address the specific dysfunction of the recipient as identified in his or her treatment plan. As a service in a program serving children with a diagnosis of emotional disturbance, play therapy and expressive art therapy may also be included.

Section 587.9 is amended to add a new paragraph (f), and existing paragraphs (f) through (k) are renumbered (g) through (l), to read as follows:

(f) A clinic treatment program that has been approved to be a Children and Family Clinic Plus provider shall also provide the following services:

(1) Mental Health Screening. Such services shall be provided in a community setting, and shall be provided with the prior written consent of the child's parent or legal guardian.

(2) Comprehensive Assessment. A comprehensive assessment can be performed over the course of not more than three(3) visits per client, and is intended to determine the presence and nature of any emotional disturbance and to develop a treatment plan where appropriate.

(3) In-Home Services.

(4) Evidence-Based Treatment.

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 September 26, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Joyce Donohue, Bureau of Policy, Regulation and Legislation, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

Regulatory Impact Statement

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

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

Chapter 54 of the Laws of 2006 provides funding appropriations in support of the Child and Family Clinic Plus Program.

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

3. Needs and Benefits: Clinic treatment has been the foundation of the public mental health system for over thirty years. Each year, nearly 100,000 children and families are served in clinic treatment. This presents New York with a unique opportunity to demonstrate the impact that a transformation in State policy, financing and regulation, can make. The structure and financing of the clinic treatment program have remained constant and have not kept pace with findings generated by decades of scientific study in the recognition, diagnosis and treatment of childhood mental illness.

Currently, clinic services are very structured, designed to be delivered within an office-based setting, and require children and families to self-identify. To effectively address the mental health needs of children and their families in a timely manner, services need to be readily available and provided in a larger variety of settings, like the home. In order to achieve this shift in service provision, OMH recognizes the need for changes to be made to current clinic service structure and funding to improve access to effective and flexible services. Building on the knowledge that early and effective intervention increases the likelihood of positive outcomes; the OMH also recognizes the need to systematically identify childhood mental illness early through screening activities and to improve services by incorporating evidenced-based practices. Additionally, the President's New Freedom Commission's goal to address disparities in mental health services must be considered. These disparities are readily seen through the lenses of culture, race, age and gender. The opportunity to reduce these disparities in the children's mental health system is within our grasp. When taken together, these actions are expected to result in the transformation of the children's mental health system into one that more effectively addresses the needs of the children and families of New York State.

By this rulemaking, and as funded and authorized by the 2006-07 enacted State Budget, OMH is seeking to transform local mental health clinics from a passive program waiting for clients to present, to an active program that will intervene earlier in a child's developmental trajectory. Through Child and Family Clinic-Plus, the children's mental health system will adopt a public health approach to the early recognition and treatment of health concerns. With this new approach, children will be screened for emotional disturbance in their natural environment each year. Children in need of treatment will have access to a comprehensive assessment that utilizes the practice parameters from the American Academy of Child and Adolescent Psychiatry as well as evidence-based tools and scales. Children and families requiring treatment will find that Clinic-Plus brings improved access, in-home services, and treatments that have been shown through science to work. The initiative calls for the expansion of clinic services, creating greater access for children and their families receiving clinic treatment and in-home treatment services.

Each Child and Family Clinic-Plus provider will collaborate with its respective County or the City of New York to conduct systematic early recognition activities for the identified priority populations; demonstrate skill in engaging families in treatment; offer a range of evidence-based treatments that are individually determined and family focused; and will provide a constellation of support services in the home and community that lead to skill mastery for the child and family. Each Clinic-Plus will be licensed by the OMH as an outpatient clinic and will receive Medicaid and State Aid enhancements.

The primary components of Child and Family Clinic-Plus include:

- Broad-based screening in natural environments
- Comprehensive assessment
- Expanded clinic capacity
- In-home services
- Evidence Based Treatment

Numerous research studies document the lack of adequate identification and treatment for children with serious emotional disturbance. In what was perhaps the largest epidemiological study of its kind, Kessler et al shows that the age of onset for serious mental illness in adulthood occurs in early adolescence, yet identification and treatment are often delayed for years. The age of onset is much earlier than once thought and has profound implications for children's mental health. There is a long and rich scientific

history substantiating the fact that there is a developmental progression to behavioral/emotional problems among young children. Emotional or behavioral problems unrecognized in childhood can cascade into full blown psychiatric disorders with serious debilitating consequences in adolescence or adulthood. Furthermore, there is a strong gradient of risk, such that problems left unrecognized and untreated can become far more severe and intractable illnesses in adulthood. In fact, the continuity of young children's behavioral or emotional disorders into later problems in adolescence or adulthood is among the strongest and most unequivocal of scientific findings.

Decades of research, support the following:

- (1) mental health problems can be recognized as early as preschool;
- (2) risk factors for development of mental health problems can be identified in childhood and many are modifiable;
- (3) failure to identify and to intervene can have life-long and often devastating effects;
- (4) scientifically-validated tools for early recognition exist; and
- (5) a range of effective intervention service programs exist and they have a strong scientific base.

4. Costs:

(a) Costs to private regulated parties: There will be no mandated unreimbursed costs to the regulated parties.

(b) Costs to state and local government: The annual state cost for the program is estimated to be \$21,500,000.00. There is no local Medicaid share or other costs for this program.

(c) The cost projection was calculated as follows:

Screening for approximately 235,000 children	\$ 1,881,000
New clinic admissions for approximately 23,500*	11,679,000
In-home services (17,500)	7,940,000
Total	\$ 21,500,000

* Includes comprehensive assessments and clinic expansion

5. Local Government Mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

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

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

8. Alternatives:

A. Alternatives to providing authorization for Child and Family Clinic Plus.

The only alternative would be inaction. As this program, Child and Family Clinic Plus, has been established and funded in statute, this alternative was considered as contrary to the intent of the legislation.

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

10. Compliance Schedule: The authority to establish and fund the Child and Family Clinic Plus program is effective on the filing date of this rulemaking.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant negative economic impact on small businesses, or local governments. The clinic expansion associated with Child and Family Clinic Plus contains no local government share of Medicaid. The establishment of the Child and Family Clinic Plus Program is required by the enacted 2006-2007 state budget.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will have no negative impact on services and programs serving residents of rural counties. Child and Family Clinic Plus is an expansion of existing clinic services creating increased access for children and families statewide. Children and families in the 44 counties designated as rural counties by the New York State Legislature, as well as non-rural counties will benefit from the establishment of this new statewide program.

Job Impact Statement

This rulemaking establishes a new program: Child and Family Clinic Plus which will involve new employment opportunities for staff providing these services. It will not have any negative impact on jobs and employment activities.

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

Operation of Residential Treatment Facilities for Children and Youth

I.D. No. OMH-29-07-00013-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 584.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

Subject: Operation of residential treatment facilities for children and youth.

Purpose: To continue the temporary increase in the capacity of certain RTF's to serve the needs of emotionally disturbed children and youth.

Text of proposed rule: Subdivision 584.5(e) of Part 584 of 14 NYCRR is amended to read as follows:

(e) An operating certificate shall be issued for a residential treatment facility for a resident capacity of no less than 14 and no more than 56; provided, however, that for the period commencing April 1, 2000 through [September 30, 2007] *September 30, 2010*, bed capacity for facilities primarily serving New York City residents may be temporarily increased up to an additional ten beds over the maximum certified capacity with the prior approval of the Commissioner. In order to receive such approval, the residential treatment facility must demonstrate that the additional capacity will be used to serve those children and youth deemed most in need of RTF services by the New York City Preadmission Certification Committee as set forth in Section 583.8 of this Title.

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

Data, views or arguments may be submitted to: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12208, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

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

Regulatory Impact Statement

1. Statutory Authority: 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

2. Legislative Objectives: 14 NYCRR Part 584 sets forth standards for the operation of Residential Treatment Facilities for Children and Youth. This amendment to Section 584.5(e) of this Part allows for the temporary increase of capacity of certain facilities to allow additional children and youth to be served in the program.

3. Needs and Benefits: The Office of Mental Health has determined that it is necessary to continue the existing capacity of these Residential Treatment Facilities for Children and Youth (RTFs) which serve seriously emotionally disturbed children and youth who are residents of New York City. Under the existing regulation, (14 NYCRR Section 584.5(e)), RTF bed capacity serving primarily New York City residents may be temporarily increased until September 30, 2007 by up to 10 additional beds over the permitted maximum of 56 per facility.

To expand capacity in 2000, a total of 21 temporary beds were added to 5 existing RTF facilities serving New York City residents. These beds were added on a voluntary basis with the cooperation of the facilities and the support of the New York City Department of Mental Health. Since 2000, three of the facilities that were not at the 56 bed maximum had their capacity increased administratively by a total of 13, without going over the maximum. One of the facilities, St. Christopher Oillie, was at 56 beds and another, Linden Hill, was at 55 beds. St. Christopher Oillie added 5 beds. Linden Hill added 3 beds. Therefore, currently 7 beds are permitted to be added under 14 NYCRR Section 584.5(e) as it currently exists. That permission will expire on September 30, 2007. Although significant improvements in development of residential alternatives, including supervised community residences and the family based treatment beds, have been made in the past three years, the current need for children's services is such that these beds must continue to be available resources. The expira-

tion date must be changed to September 30, 2010, in order to permit the continued necessary increase in RTF capacity for an additional three years.

There are plans to transfer authority to operate two additional beds to Linden Hill, increasing its capacity from 58 to 60. This would result in a total of nine beds in excess of the 56 bed cap. The cost projection in item 4 (2) below is based on these nine beds.

4. Costs:

(1) Costs to private regulated parties: There will be no mandated costs to the regulated parties associated with allowing an increase in capacity to the RTF program.

(2) Cost to state and local government: The annual state cost for 9 additional beds is estimated to be \$686,105. These additional funds will be covered by the State share of Medicaid appropriation. There is no local share for the RTF program.

(3) The cost projection was calculated by applying the per bed projected Medicaid rate to the 9 additional beds:

RTF	2006-07 Daily Residential # Beds Rate Over		2006-07 Annual Gross Residential Cost	State Share
		56		
St. Christopher				
Oillie	\$408.12	5	\$744,819	\$372,410
Linden Hill	\$429.72	4	\$627,391	\$313,696
Total		9	\$1,372,210	\$686,105

5. Local Government Mandates: There will be no additional mandates to local government.

6. Paperwork: There are no new paperwork requirements associated with this amendment.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may effect this rule.

8. Alternatives: The only alternative would be to allow the temporary additional capacity authority to expire, which is not acceptable given the critical need for these services.

9. Federal Standards: The rule does not exceed any Federal standards.

10. Compliance Schedule: Providers will be able to comply with this rule immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules will not impose any adverse economic impact on small businesses, or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules impact only Residential Treatment Facilities for Children and Youth serving children who are New York City residents.

Job Impact Statement

Because this amendment will impact only 2 providers of Residential Treatment Facilities for Children and Youth, and only permits these 2 providers to continue the temporary operation of a total of 7 beds until September 30, 2010, it will not have any impact on jobs and employment activities.

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

Personalized Recovery-Oriented Services

I.D. No. OMH-29-07-00014-P

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

Proposed action: Repeal of Part 572 and addition of new Part 572 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 41.05, 43.02(a), (b) and (c); Social Services Law, sections 364(3) and 364-1(1)

Subject: Program and fiscal requirements for personalized recovery-oriented services.

Purpose: To revise standards for personalized recovery-oriented services.

Substance of proposed rule (Full text is posted at the following State website: www.omh.state.ny.us): This rule will repeal the current Part 512 which established a new licensed program category for Personalized Recovery-Oriented Services (PROS) programs. It will adopt a new Part 512 which has significant clarifications and expanded guidance. The revisions are noted in this summary.

OVERVIEW OF CURRENT STANDARDS

The purpose of PROS programs is to assist individuals to recover from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers are expected to create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

Depending upon program configuration and licensure category, PROS programs are required to include the following four components:

1) Community Rehabilitation and Support (CRS): designed to engage and assist individuals in managing their illness and in restoring those skills and supports necessary to live in the community.

2) Intensive Rehabilitation (IR): designed to intensively assist individuals in attaining specific life roles such as those related to competitive employment, independent housing and school. The IR component may also be used to provide targeted interventions to reduce the risk of hospitalization or relapse, loss of housing or involvement with the criminal justice system, and to help individuals manage their symptoms.

3) Ongoing Rehabilitation and Support (ORS): designed to assist individuals in managing symptoms and overcoming functional impairments as they integrate into a competitive workplace. ORS interventions focus on supporting individuals in maintaining competitive integrated employment. Such services are provided off-site.

4) Clinical Treatment: designed to help stabilize, ameliorate and control an individual's symptoms of mental illness. Clinical Treatment interventions are expected to be highly integrated into the support and rehabilitation focus of the PROS program. The frequency and intensity of Clinical Treatment services must be commensurate with the needs of the target population.

There are 3 license categories for PROS programs: Comprehensive PROS with clinical treatment (provides all 4 components), Comprehensive PROS without clinical treatment (provides CRS, IR and ORS components), and limited license PROS (provides IR and ORS components only).

All PROS providers, regardless of licensure category, are required to offer individualized recovery planning services and pre-admission screening services. Furthermore, depending on the licensure category, providers are required to offer a specified array of services that are delineated in Part 512. Any additional services may be offered if they are clinically appropriate and approved in advance by OMH. Persons eligible for admission to a PROS program must: be 18 years of age or older; have a designated mental illness diagnosis; have a functional disability due to the severity and duration of mental illness; and have been recommended for admission by a licensed practitioner of the healing arts. Such recommendation may be made by a member of the PROS staff, or through a referral from another provider.

A PROS provider is required to continuously employ an adequate number and appropriate mix of clinical staff consistent with the objectives of the program and the number of individuals served. Providers must maintain an adequate and appropriate number of professional staff relative to the size of the clinical staff. In Comprehensive PROS programs, at least one of the members of the provider's professional staff must be a licensed practitioner of the healing arts, and must be employed on a full-time basis. IR services must be provided by, or under the direct supervision of, professional staff. The regulation provides that if a PROS provider has recipient employees, such employees must adhere to the same requirements as other PROS staff, and must receive specified training.

An Individualized Recovery Planning process must be carried out by, or under the direct supervision of, a member of the professional staff, and must be in collaboration with the individual and any persons the individual has identified for participation. The regulation sets out the contents and the time frames for development of the Individualized Recovery Plan (IRP).

The regulation provides standards and requirements that must be met in order for providers to receive Medicaid reimbursement. The reimbursement is a monthly case payment based on the services provided to a PROS participant or collateral in each of the PROS components and the total amount of program participation for the individual during the month. The rate of payment will be a monthly fee determined by the Commissioner and approved by the Division of the Budget. Fee schedules, based on defined Upstate and Downstate geographic area, are included in the regulation.

Part 512 also addresses requirements relating to the content of the case record, co-enrollment in PROS and other mental health programs, quality

improvement, organization and administration, governing body, recipient rights, and physical space and premises.

REVISIONS REGARDING REIMBURSEMENT METHODOLOGY

To ensure that the PROS reimbursement standards more clearly support the programmatic intent of the PROS model, and more clearly articulate the billing expectations, the Office of Mental Health (OMH), in collaboration with the Department of Health, has revised the PROS reimbursement methodology. While the concept of a monthly tiered case payment is unchanged, the building blocks of the methodology are now based on program "units."

PROS units are determined by a combination of program participation (measured in time) and service frequency (measured in number), and are accumulated during the course of each day that the individual participates in the PROS program. The units are then aggregated to a monthly total to determine the level of the PROS monthly base rate that can be billed each month. These program units support the billing concept of a "modified threshold visit."

- Program participation is defined as the length of allowable time that recipients or collaterals participate in the PROS program, both on-site and off-site.
 - Scheduled meal periods or planned recreational activities that are not specifically designated as medically necessary are excluded from the calculation of program participation.
 - Time spent in the provision of services with collaterals, other than a period of the program day that is simultaneously being credited to the recipient, may be included in the calculation of program participation.
 - An individual must have at least 15 minutes of continuous program participation within a program day to accumulate any units.
 - Program participation is measured and accumulated in 15 minute increments. Increments of less than 15 minutes must be rounded down to the nearest quarter hour to determine the program participation for the day.
- Service frequency is defined as the number of medically necessary services delivered to a recipient, or his or her collateral, during the course of a program day.
 - A minimum of one service must be delivered during the course of a program day to accumulate any units.
 - Services provided in a group format must be at least 30 minutes in duration.
 - Services provided in an individual modality must be at least 15 minutes in duration.
 - Medically necessary PROS services include:
 - Crisis intervention services;
 - Pre-admission screening services;
 - Services provided in accordance with the screening and admission note; and
 - Services provided in accordance with the IRP.
- PROS units are calculated in accordance with the following rules:
 - PROS units are accumulated in .25 increments.
 - The maximum number of PROS units per individual per day is five.
 - The formula for accumulating PROS units during a program day is as follows:
 - If one medically necessary PROS service is delivered, the number of PROS units is equal to the duration of program participation, rounded down to the nearest quarter hour, or two units, whichever is less.
 - If two medically necessary PROS services are delivered, the number of PROS units is equal to the duration of program participation, rounded down to the nearest quarter hour, or four units, whichever is less.
 - If three or more medically necessary PROS services are delivered, the number of PROS units is equal to the duration of program participation, rounded down to the nearest quarter hour, or five units, whichever is less.
 - A minimum of two PROS units must be accrued for an individual during a calendar month in order to bill the monthly base rate.
- Under the revised methodology, providers will continue to bill on a monthly case payment basis.

- To determine the monthly base rate, the daily PROS units accumulated during the calendar month are aggregated and translated into one of the five payment levels. While the current rate codes and billing process will continue to be utilized, new PROS rates are effective for the 2006-07 State fiscal year. The 2005-06 rate adjustment for OMH licensed clinics has been applied to the PROS Clinical Treatment rate.

REVISIONS REGARDING DOCUMENTATION

The PROS documentation standards have been revised in order to clarify the record-keeping requirements for documenting medical necessity, as well as to support the revised reimbursement methodology.

Within a PROS program, evidence of medical necessity is supported through a combination of screening and assessments, the IRP, and periodic progress notes. In an effort to strengthen the evidence of medical necessity within the IRP, consistent with the principles of person-centered planning, the related requirements have been modified to clarify the programmatic intent. To that end, there is a more explicit requirement for an identified connection between an individual's recovery goals, the barriers to the achievement of those goals that are due to the individual's mental illness, and the recommended course of action. Furthermore, there is a more precise requirement related to justifying the need for services that are more expensive or intensive than those in the CRS component (i.e., IR, ORS or Clinical Treatment services). Finally, there are specific and detailed requirements for the documentation of service delivery used as the basis for the monthly bill.

REVISIONS REGARDING GROUP SIZE

In many instances, PROS services will be provided in a group format. While the PROS program model did not contemplate groups of excessive size, the existing regulations did not explicitly address this issue. To ensure that group services are delivered in a clinically optimal manner, the PROS standards are being revised to limit the size of groups. Each CRS or Clinical Treatment group will generally be limited to 12 participants (recipients and/or collaterals) and each IR group will generally be limited to 8 participants (recipients and/or collaterals) with specified exceptions. From a program operations perspective, the size of the groups (consistent with the above limitations) cannot be exceeded on a "regular and routine" basis. This standard will be monitored and addressed through OMH's certification process.

From a fiscal perspective, reimbursement on behalf of participating group members will be subject to certain limits (assuming that all services are medically necessary).

REVISIONS REGARDING STAFFING

As the result of feedback from a variety of stakeholders, two components of the existing PROS staffing requirements are being revised. One of the modifications relates to the use of psychiatric nurse practitioners in lieu of a portion of the psychiatrist coverage; the second revision relates to the transition of newly licensed providers to full compliance with the professional staffing requirements.

REVISIONS REGARDING REGISTRATION SYSTEM

Following the original promulgation of the PROS regulations, OMH developed and implemented a PROS registration system. The intent of this system is to establish a process whereby PROS providers and other service providers can be informed, at the earliest possible date, of potential co-enrollment situations that are not otherwise authorized. Therefore, the use of the registration system is intended to prevent duplicative Medicaid billing, and thus reduce the need for post-payment adjustments. The PROS regulations have been revised to accommodate the concept of registration.

REVISIONS REGARDING TRANSITION

With the Commissioner's permission, providers operating pursuant to a PROS operating certificate on or before November 1, 2006, may, subject to certain conditions, continue to operate pursuant to the requirements of Part 512 in effect prior to that date.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

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

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

Regulatory Impact Statement

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

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

Section 41.05 of the Mental Hygiene Law provides that a local governmental unit shall direct and administer a local comprehensive planning process for its geographic area in which all providers of service shall participate and cooperate through the development of integrated systems of care and treatment for people with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for services approved by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by the OMH such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner of Mental Health authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for services.

Sections 364(3) and 364-a(1) of the Social Services Law give OMH responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. Legislative Objectives: Articles 7, 31 and 43 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and establish rates of payments for services under the Medical Assistance program. Sections 364 and 364-a of the Social Services Law reflect the role of the Office of Mental Health regarding Medicaid reimbursed programs.

3. Needs and Benefits: The Personalized Recovery-Oriented Services (PROS) initiative creates a framework to assist individuals and providers in improving both the quality of care and outcomes for people with serious mental illness in New York State.

In 2005, OMH, with input from local government, consumers, family members and provider organizations, developed a new Medicaid license: PROS. This license takes advantage of the flexibility offered through the Rehabilitation Option of the Federal Medicaid Program. The license gives local government and providers the ability to integrate multiple programs into a comprehensive rehabilitation service. Providers may combine clubhouses, intensive psychiatric rehabilitation treatment (IPRT) programs and other rehabilitation program categories, reducing fragmentation and increasing continuity of care and accountability for achieving recovery goals. Also, there is the option to incorporate Continuing Day Treatment (CDT) programs and clinical treatment into a PROS license. These two program categories are currently licensed separately under mental health regulations.

The PROS license gives service providers the ability to support consumers as they progress with their recovery. The purpose of PROS programs is to assist individuals in recovering from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are expected to be available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers must create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

The PROS program structure combines under one license basic rehabilitation services; time limited, goal focused intensive rehabilitation, which a consumer can access at various points in the recovery process; ongoing mental health supports to individuals who have secured employment; and an optional clinical treatment component, which allows treatment services to be fully integrated into rehabilitation planning and service provision. All these components are coordinated toward a person's recovery using an Individualized Recovery Plan (IRP).

The PROS license is used to advance the adoption on the front lines of care of several scientifically proven practices which have produced superior outcomes for individuals with severe and persistent psychiatric conditions. These include wellness self-management (also referred to as illness management and recovery), family psycho-education, ongoing rehabilitation and support related to the evidence based practice of supported employment, integrated treatment for co-occurring mental illness and substance abuse, and evidence-based medication practices. By using the comprehensive nature of the PROS license and the IRP, these practices will be able to be provided in combination, offering the potential to amplify recovery outcomes.

Providers collect outcome data in the areas of psychiatric hospitalization, emergency room use, contact with the criminal justice system, consumer satisfaction, employment, education and housing stability. These data are used to help determine program effectiveness and each provider will be asked to develop an ongoing quality improvement process using their outcome data.

The design of PROS addresses many of the care delivery system problems. Access to the range of services needed to facilitate recovery will be increased due to the comprehensive nature of the license. The use of an IRP promotes consumer and provider collaboration toward recovery and fosters integration of rehabilitation, support and treatment, thereby reducing fragmentation. The flexibility of the license stimulates creative development of recovery-oriented services. Consumers are allowed to choose services from more than one PROS provider, so consumer choice is preserved. The design encourages a provider to work with a consumer throughout the recovery process, enhancing accountability for outcomes. By collecting outcome data and using it to help improve individual outcomes and program effectiveness, a data-based continuous quality improvement process is introduced. The various aspects of the PROS license, when viewed as a whole, support and encourage a recovery-focused culture and service delivery system.

To ensure that the PROS reimbursement standards more clearly support the programmatic intent of the PROS model, and more clearly articulate the billing expectations, OMH, in collaboration with the Department of Health, has revised the PROS reimbursement methodology. While the current concept of a monthly tiered case payment is unchanged, the building blocks of the methodology are now based on program "units."

PROS units are determined by a combination of program participation (measured in time) and service frequency (measured in number), and are accumulated during the course of each day that the individual participates in the PROS program. The units are then aggregated to a monthly total to determine the level of the PROS monthly base rate that can be billed each month. These program units support the billing concept of a "modified threshold visit." The revised methodology, using units, provides for a more accurate and effective approach to billing.

Under the revised methodology, providers will continue to bill on a monthly case payment basis. To determine the monthly base rate, the daily PROS units accumulated during the calendar month are aggregated and translated into one of the five payment levels. While the current rate codes and billing process will continue to be utilized, new PROS rates are effective for the 2006-07 State fiscal year. The 2005-06 rate adjustment for OMH licensed clinics has been applied to the PROS Clinical Treatment rate.

The PROS documentation standards have been revised in order to clarify the record-keeping requirements for documenting medical necessity, as well as to support the revised reimbursement methodology. Within a PROS program, evidence of medical necessity is supported through a combination of screening and assessments, the IRP, and periodic progress notes. In an effort to strengthen the evidence of medical necessity within the IRP, consistent with the principle of person-centered planning, the related requirements have been modified to clarify the programmatic intent. To that end, there will be a more explicit requirement for an identified connection between an individual's recovery goals, the barriers to the achievement of those goals that are due to the individual's mental illness, and the recommended course of action. Furthermore, there will be a more precise requirement related to justifying the need for services that are more expensive or intensive. Finally, there are specific and detailed requirements for documentation of service delivery used as the basis for the monthly bill.

In many instances, PROS services offered will be provided in a group format. While the PROS program model did not contemplate groups of excessive size, the previous regulation did not explicitly address this issue. To ensure that group services are delivered in a clinically optimal manner, the PROS standards have been revised to limit the size of certain groups. From a program operations perspective, the size of the groups cannot be exceeded on a "regular and routine" basis. This standard will be monitored and addressed through OMH's certification process. From a fiscal perspective, reimbursement on behalf of participating group members will be subject to certain limits (assuming that all services are medically necessary).

As the result of feedback from a variety of stakeholders, two components of the existing PROS staffing requirements have been revised. One of the modifications relates to the use of psychiatric nurse practitioners in lieu of a portion of the psychiatrist coverage; the second revision relates to the transition of newly licensed providers to full compliance with the

professional staffing requirements. Following the original promulgation of the PROS regulations, OMH developed and implemented a PROS registration system. The intent of this system is to establish a process whereby PROS providers and other service providers can be informed, at the earliest possible date, of potential co-enrollment situations that are not otherwise authorized. The use of the registration system is intended to prevent duplicative Medicaid billing, and thus reduce the need for post-payment adjustments. The PROS regulations have been revised to accommodate the concept of registration. The revised PROS regulation will support the growth of the PROS program as it develops to its full potential. Note: The Commissioner may permit providers operating pursuant to a PROS operating certificate on or before November 1, 2006, to continue to operate pursuant to the requirements of Part 512 in effect prior to November 1, 2006. Such permission shall be granted only if such providers shall have submitted and the Commissioner shall have approved a transition plan setting forth a timetable for complying with the requirements of this Part.

4. Costs:

a. Any additional costs to existing efficiently and economically run programs that are converting to PROS will be fully funded through the PROS Medicaid fee and/or startup funding provided by the Office of Mental Health.

b. Sufficient funding has been included in the current enacted budget to enable economically and efficiently run programs to convert to PROS. Approximately 350 providers have programs that are eligible for conversion to PROS. Existing resources associated with these programs include approximately \$251 million in gross program funding, of which \$139 million is State funding, \$14 million is local funding and \$97 million is Federal funding. After conversion to PROS, gross program funding is estimated to be \$283 million of which State resources are \$129 million, local resources are \$14 million and Federal resources are \$140 million. The implementation of PROS is estimated to result in no increase in local funding.

5. Local government mandates: The regulation will not mandate any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts. The regulation will provide for optimal county involvement in the process of evaluating the quality and appropriateness of PROS programs. Counties may choose to participate in this process with the Office of Mental Health, but it is not required.

6. Paperwork: This rulemaking will require programs that participate to complete the paperwork which is necessary to receive medical assistance payments and will not result in a substantial change in paperwork requirements.

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

8. Alternatives: The only alternative considered was to continue to use the current program and licensing standards without revision. This alternative was rejected because of the need for further clarification of the current standards and additional regulatory guidance to ensure compliance with programmatic intent and federal requirements for Medicaid reimbursement.

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

10. Compliance schedule: The regulatory amendment will be effective when adopted.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this notice because this new rule will not impose an adverse economic impact on small businesses or local governments. This rule, which repeals Part 512, the current regulation authorizing the Personalized Recovery-Oriented Services (PROS) program, and adds a new Part 512, will revise certain PROS program standards including those relating to the process of obtaining reimbursement, reimbursement rates, establishing group size, staffing and registration.

The providers who will be subject to this rule will be organizations that now hold or in the future apply to establish a PROS program. The majority of these provider organizations are not-for-profit corporations and county governments who currently operate outpatient programs funded and licensed by the Office of Mental Health and/or provide mental health services under contract with local governments and/or OMH and are supported by state and/or local funding.

The existing programs and services that have transitioned or will transition into PROS include Intensive Psychiatric Rehabilitation Treatment and Continuing Day Treatment, currently licensed by the Office of Mental Health (OMH). They also include services previously or currently funded by OMH, but not licensed, such as Psychosocial Clubs, On-Site Rehabili-

tation, Ongoing Integrated Employment, Enclave in Industry, Affirmative Business, Client Worker and Supported Education.

The licensed programs are currently required to be established through a process that is subject to Part 551 of 14NYCRR and must comply, on an ongoing basis, with the appropriate program and fiscal regulations as contained in Title 14, including standards for receiving Medicaid reimbursement. The unlicensed programs are established and provide services under contracts with OMH and/or the local governmental unit (the county or the City of New York, depending on location) and are subject to contractual program and fiscal requirements. The requirements are, in part, specific to the funding streams involved, which include: Local Assistance Regular, Community Support Services, Reinvestment, Ongoing Integrated Employment, Psychiatric Rehabilitation, Flexible Funding and Medicaid. While many of the fiscal contractual requirements are the same, there are certain fiscal requirements specific to certain funding streams. Most funding passes from the State to local governments and then to providers and is subject to both State and local government contract requirements.

The PROS program, as revised, will continue to promote comprehensive and coordinated services, foster continuity, and result in more effective program organization and service delivery. It will reduce program-related paper work involved with transfers; for example, an Intensive Psychiatric Rehabilitation Treatment Program must currently discharge an individual when that person achieves the stated goal even if the person needs ongoing support to maintain that goal. That individual's ongoing needs may then require transfer to another program in order to obtain necessary clinical services. The PROS program provides for integration of programs and services, and it will serve to reduce the paperwork required in such a situation, as what were formerly separate programs and services will now be service components under a single PROS license.

The revised PROS regulation continues to provide for a case payment approach to reimbursement which simplifies the Medicaid billing process. The multiple program and service components that formerly had to comply with separate contract requirements for each program funding stream and/or Medicaid fee-for-service with a more complex billing process will, under the revised PROS regulation, come together into a single program and be funded by a comprehensive per client case payment, billed on a monthly basis. For a number of service providers, billing Medicaid, as opposed to contract funding, may be a new experience. In recognition of this, OMH has and will continue to provide start-up funding for Medicaid billing development costs for providers transitioning to a PROS license in Phase I of implementation. Such start-up funds will be provided in accordance with need and availability of appropriations. Model record-keeping forms will also be developed by OMH and made available to all providers, for use at their discretion. The case payment rate has been enhanced under the revised regulation to a level sufficient to fund the costs of providing the PROS services, including the costs of documenting compliance and billing for services.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the amended rule will not impose any adverse economic impact on rural areas. Rural and non-rural programs will benefit from the integration of now separate programs and services and the revisions will not have a unique or negative impact on Personalized Recovery-Oriented Services (PROS) programs in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it will have no negative impact on jobs and employment opportunities. It is expected that employment opportunities for individuals receiving services from a new Personalized Recovery-Oriented Services (PROS) provider will increase when compared to the current fragmented service system and that the revised PROS regulation will not significantly differ from the current regulation in terms of impact on jobs and employment opportunities.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Management of Personal Allowance

I.D. No. MRD-29-07-00022-P

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

Proposed action: Repeal of sections 633.14 and 633.15; addition of new section 633.15; and amendment of sections 633.99, 635-9.1 and 635-99.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Management of personal allowance.

Purpose: To consolidate, reorganize and update the current requirements into a regulation to make it easier to use; place more of an emphasis on consumer choice; and add new features such as electronic recordkeeping, money management assessments, personal expenditure planning and person-owned bank accounts.

Substance of proposed rule (Full text is not posted on a State website):

THE REPEAL OF 14 NYCRR

SECTIONS 633.14 AND 633.15;

ADDITION OF NEW SECTION 633.15 AND AMENDMENT OF
SECTIONS 633.99, 635-9.1, AND 635-99.1

Applies to all residential facilities certified or operated by OMRDD, including family care homes, and non-residential programs which accept responsibility for handling personal allowance of residents of residential facilities.

Adheres to the intent of Section 131-o of the Social Services Law with regard to the management and use of personal allowance funds.

Consolidates the old Sections 633.14 and 633.15 into one new regulation.

Generally maintains current regulatory requirements. Significant changes are noted in this summary.

Eliminates "training accounts" and introduces "person-owned" bank accounts for which a person shall exercise independent control consistent with his/her money management assessment.

Specifically allows for the use of electronic ledger cards.

Adds a requirement for personal expenditure planning for each person receiving personal allowance. This is a process that includes a personal expenditure plan which is developed by a personal expenditure planning team. The plan includes a description of a person's resources and anticipated spending on an annual and/or monthly basis. It also includes spending options which reflect a person's needs, preferences and choices, and general parameters for personal spending.

Requires that a copy of the personal expenditure plan be maintained in the residential record.

Adds a requirement for a money management assessment to be completed by each person's expenditure planning team for each person receiving personal allowance. The money management assessment must indicate the person's ability to manage funds to which they have independent access, the amount of funds the person can manage without receipts, and the frequency with which the funds are provided.

Includes specific parameters for receipts which require receipts when any purchase is made by staff and family care providers and for purchases made by persons that are over \$15, except when there is a cash distribution directly to the person.

Includes a record retention requirement of four years.

Includes requirements for non-residential providers who accept responsibility for handling personal allowance monies transferred to it by residential providers. These requirements necessitate developing policies and procedures, maintaining a ledger, obtaining receipts for certain expenditures, and assuring that use of funds benefit the person and are in accordance with the personal expenditure plan.

Establishes a requirement for annual random internal agency audits of at least 25% of the personal allowance accounts.

Text of proposed 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

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

Public comment will be received until: 60 days after publication of this notice.

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) 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 the New York State Mental Hygiene Law Section 13.07.

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

c. Section 16.00 of the Mental Hygiene Law grants the commissioner the authority to adopt and promulgate any regulation reasonably necessary to implement and effectively exercise the powers and perform duties set forth in article 16 of the Mental Hygiene Law, which are necessary to maintain the consistent high quality of services provided within the State to its citizens with mental retardation and developmental disabilities.

2. Legislative Objectives – This new regulation furthers the legislative objectives embodied in sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The promulgation of this regulation will support greater latitude and accountability in service provision incorporating expenditure planning which promotes individual choices and streamlines regulatory structure.

3. Needs and Benefits –

a. The existing regulations were promulgated almost twenty years ago in an operating environment radically different from the one today, particularly in the areas of community participation and individual choices. The current regulations are out of sync with current program operations. OMRDD has taken a proactive step as the proposed regulations simplify the language used, streamline the regulatory structure and bring the requirements into comparability with the programs in use today.

4. Costs –

a. There will be minimal additional costs associated with implementation and compliance with the proposed regulation. First, the annual internal agency audits of personal allowance accounts increases from 10% to 25% therefore requiring additional staff time to complete. Second, development and documentation of a personal expenditure plan which includes a money management assessment for each person served is a new feature of the regulation. The implementation of the regulation proposed by OMRDD would phase the requirements for the development of the personal expenditure plan in over a twelve – month period in step with each person's annual program plan review, which should further minimize any additional expenditure. In general, OMRDD anticipates that any additional work will be done by existing staff and that most agencies will incur no additional costs.

b. There will be no additional costs to OMRDD as the agency will use existing staff to implement this rule.

c. There will be no additional costs to local governments.

5. Paperwork –

a. There is one specific additional document for each person served required by the proposed regulation compared to current regulatory requirements: a personal expenditure plan which includes a money management assessment. However, an assessment of each person's abilities to manage money and expenditure planning for each person throughout the year has always been inherent to the process in a less explicit manner. The proposed regulation merely adds specificity to the requirement in a way that makes it clear to providers and individuals they serve.

6. Local Government Mandates –

a. There are no new requirements imposed by the rule on any county, city, town, village, or school, fire, or other special district.

7. Duplication –

a. The regulation does not duplicate any existing State or Federal requirement.

8. Alternatives –

a. This new regulation was in development for several years and many issues were debated by departmental experts including alternatives. These experts concluded that the only alternative would be to maintain the current regulations much of which are outdated and do not reflect current best practices. Therefore, OMRDD decided to rewrite and update the regulation and incorporate these practices.

9. Federal Standards –

a. The proposed regulation does not exceed any minimum standard of the federal government for the same or similar subject area.

10. Compliance Schedule –

a. OMRDD intends to finalize the proposed regulation within and according to the timeframes established by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Types and number of small businesses and local governments rule applies –

a. The proposed regulation will apply to voluntary not-for-profit corporations that provide residential and/or day services in programs which New York State currently funds. OMRDD has determined that some of these agencies employ fewer than 100 employees and would therefore be classified as small businesses. OMRDD has determined that this regulation will not have any negative effect on these small businesses.

There are no additional costs associated with the proposed amendments for local governments.

2. Reporting, recordkeeping, compliance requirements –

a. There are minimal additional compliance requirements for small businesses that would result from implementation of this regulation. These include the increase in the internal agency audits of personal allowance accounts from 10% to 25% and the implementation of the personal expenditure plan requirement. There are also minimal additional reporting or record keeping requirements resulting from this regulation. Paperwork utilized by providers of services associated with the delivery of services has been required by OMRDD through regulation and various policy memorandums for several years now. The one new specific document required by the proposed regulation is a personal expenditure plan which includes a money management assessment. However, an assessment of each person's ability to manage money and expenditure planning throughout the year has always been inherent to the process in a less explicit manner. This proposed regulation simply formalizes this process by requiring it be documented.

b. No additional professional services are required as a result of this proposed regulation. The regulation will not add to the professional service needs of local governments or provider agencies.

3. Cost to implement and comply with this rule –

a. There will be minimal additional costs associated with implementation and compliance with the proposed regulation. First, the annual internal agency audits of personal allowance accounts increases from 10% to 25% therefore requiring additional staff time to complete. Second, development and documentation of a personal expenditure plan which includes a money management assessment for each person served is a new feature of the regulation. The implementation of the regulation proposed by OMRDD would phase the requirements of the development of the personal expenditure plan in over a twelve – month period in step with each person's annual program plan review, which should further minimize any additional expenditure. In general, OMRDD anticipates that any additional work will be done by existing staff and that most agencies will incur no additional costs.

4. Assessment of the economic and technological feasibility of compliance –

a. There is no new technology required by the rule.

5. How the rule is designed to minimize economic impact –

a. As stated in the Regulatory Impact Statement, the proposed regulation will have no fiscal effect on State or local governments, and minimal fiscal impact on regulated parties. OMRDD has reviewed and considered the approaches for minimizing economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. There are, however, no adverse economic impacts attributable to this proposed regulation.

6. Small business and local government participation –

a. On multiple occasions, OMRDD requested input and comments on this regulation from public and private interests. Modifications to the regulation were made based on the input given by these entities. These occasions included:

1. On September 11, 2006, a mailing was sent to the various provider associations across New York State requesting comment on the regulation. These associations were: NYS Catholic Conference (Catholic Charities), United Cerebral Palsy Association of NYS, NYS ARC, NYS Association of Community Residence Administrators, NYS Rehabilitation Association, The Interagency Council, Learning Disabilities of NYS, and the Long Island Alliance. Based on their comments certain revisions were made. These included delaying the implementation date of the regulation for 90 days after the adoption date to allow for training of agencies and their staff on the features of the new regulation. Also, OMRDD revised the regulation to delay the implementation date of the personal expenditure planning portion of the regulation for 1 year to allow for this planning process to be completed at a time which coincides with the completion of each service recipient's service plan.

2. On March 19, 2007, OMRDD staff met with the same provider associations who received the first mailing and no comments were offered at that time regarding the updated version of the regulation.

3. OMRDD staff briefed the Commissioner's Advisory Council on Family Care on the regulation and no comments were offered.

4. OMRDD staff briefed the Financial Managers Association (FMA) and no comments were offered.

5. OMRDD has continuously sought input from the Social Security Administration during the development of the regulation as most of OMRDD's service recipients in receipt of benefits receive Social Security and/or Supplemental Security Income benefits. To date, no comments have been offered.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the proposed regulation is not being submitted because the regulation will not impose any adverse economic impact on rural areas or on reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposed regulation consists of a consolidation of existing regulatory requirements and the incorporation of additional features such as personal expenditure planning which includes money management assessments which may be implemented by existing agency staff.

Job Impact Statement

A JIS for the new rule was not submitted because it is apparent from the nature and purpose of the new rule that it will not have a negative impact on jobs and/or employment opportunities and it may have a slightly positive impact on employment opportunities due to new features in the rule. The finding is based on the fact that the proposed rule consists of a consolidation of existing regulatory requirements and the incorporation of additional features such as personal expenditure planning which includes money management assessments which may be implemented by existing agency staff.

Substance of final rule: The Commission adopted an order approving the petition of Northeast Gas Association on behalf of KeySpan Energy Services, Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, and Rochester Gas and Electric Corporation for a waiver of 16 NYCRR Section 226.11(d) to implement a pilot program to examine the long-term performance of fixed gas pressure factor regulators over a period of six years.

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-G-0970SA1)

NOTICE OF ADOPTION

Transfer of Land by Devon Farms Water Works, Inc.

I.D. No. PSC-32-06-00009-A

Filing date: July 2, 2007

Effective date: July 2, 2007

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

Action taken: The commission, on May 16, 2007, denied a petition filed by Devon Farms Water Works, Inc. for the transfer of approximately 0.65 acre of land to an adjacent property owner.

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

Subject: Transfer of a parcel of land.

Purpose: To deny the transfer of a parcel of land.

Substance of final rule: The Commission denied a petition filed by Devon Farms Water Works, Inc. (the company) for the transfer of approximately 0.65 acres of land to an adjacent property owner and directed the company to provide documentation that it controls and is able to protect the land within the 200 foot radius around its 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-0706SA1)

Public Service Commission

NOTICE OF ADOPTION

Annual Inspection Requirements by the Northeast Gas Association

I.D. No. PSC-36-04-00007-A

Filing date: June 29, 2007

Effective date: June 29, 2007

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

Action taken: The commission, on June 20, 2007, approved the petition of Northeast Gas Association on behalf of KeySpan Energy Services, Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation for a waiver of the requirements of 16 NYCRR section 226.11(d).

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

Subject: Annual inspection requirements pertaining to customers receiving gas delivery at pressures higher than the normal delivery pressure.

Purpose: To approve a waiver of the requirements of 16 NYCRR section 226.11(d).

NOTICE OF ADOPTION

Transfer of Land by Four Seasons Water Corp.

I.D. No. PSC-32-06-00010-A

Filing date: July 2, 2007

Effective date: July 2, 2007

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

Action taken: The commission, on May 16, 2007, denied the petition of Four Seasons Water Corp. to transfer approximately 1.16 acres of land to a developer.

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

Subject: Transfer of a parcel of land.

Purpose: To deny the transfer of a parcel of land.

Substance of final rule: The Commission denied the petition for Four Seasons Water Corp. to transfer approximately 1.6 acres of land to a

developer for failure to provide the necessary information upon which a determination could be made in the public interest.

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-0855SA1)

NOTICE OF ADOPTION

Solid State Meter by Sensus Metering System

I.D. No. PSC-49-06-00011-A

Filing date: June 29, 2007

Effective date: June 29, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order approving the Sensus APX Meter, manufactured by Sensus Metering System, to be used for electric billing applications for commercial and industrial customers in New York State.

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

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

Purpose: To approve the Sensus APX Meter, manufactured by Sensus Metering System, for use in commercial and industrial metering applications.

Substance of final rule: The Commission adopted an order approving the Sensus APX Meter, manufactured by Sensus Metering System, to be used for electric billing applications for commercial and industrial customers in New York State.

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-1408SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Bay City Metering Company, Inc.

I.D. No. PSC-51-06-00018-A

Filing date: July 2, 2007

Effective date: July 2, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order in Case 06-E-1442 approving the petition filed by Bay City Metering Company, Inc., on behalf of The Hopkins Condominium, to submeter electricity at 172 W. 79th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the request to submeter electricity at 172 W. 79th St., New York, NY.

Substance of final rule: The Commission approved a petition by Bay City Metering Company, Inc. on behalf of The Hopkins Condominium, to submeter electricity at 172 West 79th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C26998.

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-1442SA1)

NOTICE OF ADOPTION

Transfer of Water Supply Assets between Helen J. Binder Water System and the Town of Binghamton

I.D. No. PSC-52-06-00020-A

Filing date: June 28, 2007

Effective date: June 28, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order approving the joint petition of Doreen Layton as Executrix of the Estate of Helen J. Binder and the Town of Binghamton to transfer water supply assets to the Town of Binghamton.

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

Subject: Transfer of water supply assets.

Purpose: To approve the transfer of water supply assets from the Estate of Helen J. Binder to the Town of Binghamton.

Substance of final rule: The Commission adopted an order approving the joint petition of Doreen Layton as Executrix of the Estate of Helen J. Binder and the Town of Binghamton to transfer the Helen J. Binder Water System to the Town of Binghamton, 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-1466SA1)

NOTICE OF ADOPTION

Tariff Revisions by Pabst Water Company, Inc.

I.D. No. PSC-05-07-00007-A

Filing date: June 28, 2007

Effective date: June 28, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order approving Pabst Water Company Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 3—Water, to become effective July 1, 2007.

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

Subject: Water rates and charges.

Purpose: To approve the increase of Pabst Water Company Inc.'s annual revenues by \$6,539 or 26.7 percent.

Substance of final rule: The Commission adopted an order allowing Pabst Water Company Inc. (the company) to increase its annual revenues by \$6,539 or 26.7%, and directed the company to file the necessary revisions to implement the change, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-W-0017SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Profile Energy, Inc.

I.D. No. PSC-06-07-00018-A

Filing date: July 2, 2007

Effective date: July 2, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order in Case 07-E-0014 approving the petition filed by Profile Energy, Inc. on behalf of Summit Mall, to submeter electricity at 6929 Williams Rd., Niagara Falls, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), and 67(1)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Profile Energy, Inc., on behalf of Summit Mall, to submeter electricity at 6929 Williams Rd., Niagara Falls, NY.

Substance of final rule: The Commission approved a request by Profile Energy, Inc., on behalf of Summit Mall, to submeter electricity at 6929 Williams Rd., Niagara Falls, New York, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid, filed in C26998.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0014SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Groman Shores LLC

I.D. No. PSC-07-07-00016-A

Filing date: June 27, 2007

Effective date: June 27, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order approving Groman Shores LLC's request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water, to become effective July 1, 2007.

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

Subject: Water rates, charges and electronic tariff filing.

Purpose: To approve the increase of Groman Shores LLC's annual revenues by \$8,168 or 149.1 percent, and approve an electronic tariff schedule, P.S.C. No. 1—Water.

Substance of final rule: The Commission adopted an order approving Groman Shores LLC's request to convert its tariff schedule, P.S.C. No. 1—Water to electric format and to increase its annual revenues by \$8,168 or 149.1% subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS

employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-W-0139SA1)

NOTICE OF ADOPTION

Waiver of Rules 8.6 and 47 by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-09-07-00006-A

Filing date: June 28, 2007

Effective date: June 28, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order granting the petition of Niagara Mohawk Power Corporation d/b/a National Grid (the Company) for a waiver of rule 8.6 of the company's tariff to allow master-metering construction of two residential wings of the victorian manor senior living facility.

Statutory authority: Public Service Law, sections 2, 5(1)(b), 53, 65(1), (5) and 66(1)

Subject: Request for waiver of rules 8.6 and 47.

Purpose: To allow for master-metering of two new wings of the existing victorian manor senior living facility.

Substance of final rule: The Public Service Commission adopted an order granting the petition of Niagara Mohawk Power Corporation d/b/a National Grid (the Company) for a waiver of Rule 8.6 of the Company's tariff to allow master-metering construction of two residential wings of the Victorian Manor Senior Living Facility, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0060SA1)

NOTICE OF ADOPTION

Submetering of Electricity by 95 Wall Associates, LLC

I.D. No. PSC-11-07-00012-A

Filing date: July 2, 2007

Effective date: July 2, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order in Case 07-E-0188 approving the petition filed by 95 Wall Associates LLC, to submeter electricity at 95 Wall St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the request of 95 Wall Associates LLC, to submeter electricity at 95 Wall St., New York, NY.

Substance of final rule: The Commission approved a petition by 95 Wall Associates LLC, to submeter electricity at 95 Wall Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C26998.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-0188SA1)

NOTICE OF ADOPTION

Submetering of Electricity by 257/117 Realty, LLC

I.D. No. PSC-13-07-00013-A

Filing date: July 2, 2007

Effective date: July 2, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order in Case 07-E-0273 approving the petition filed by 257/117 Realty LLC, to submeter electricity at 257 W. 117th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 257/117 Realty LLC, to submeter electricity at 257 W. 117th St., New York, NY.

Substance of final rule: The Commission approved a petition by 257/117 Realty LLC, to submeter electricity at 257 West 117th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C26998.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-0273SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Stellar Management on behalf of Highbridge House Ogden, LLC

I.D. No. PSC-14-07-00008-A

Filing date: June 28, 2007

Effective date: June 28, 2007

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

Action taken: The commission, on June 20, 2007, adopted an order, confirming its prior order of March 7, 2007 in Case 06-E-1232 approving the petition filed by Stellar Management, on the behalf of Highbridge House Ogden, LLC, to submeter electricity at 1133 Ogden Ave., Bronx, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Stellar Management, on the behalf of Highbridge House Ogden, LLC, to submeter electricity at 1133 Ogden Ave., Bronx, NY.

Substance of final rule: The Commission adopted an order, confirming its prior order of March 7, 2007 approving a petition by Stellar management, on the behalf of Highbridge House Ogden, LLC, to submeter electricity at 1133 Ogden Avenue, Bronx, New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C26998.

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-1232SA2)

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

2006 RPM Report by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-29-07-00023-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 (commission) is considering Consolidated Edison Company of New York, Inc.'s (Con Edison or the company) report on 2006 performance under electric service reliability performance mechanism (2006 RPM report). Specifically, the commission will consider whether Con Edison has met all of the performance standards as prescribed by the commission in the company's current rate plan.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's 2006 RPM report.

Purpose: To consider whether Con Edison has met all of the performance standards as prescribed by the commission in the company's current rate plan.

Substance of proposed rule: The Public Service Commission (Commission) is considering Consolidated Edison Company of New York, Inc.'s (Con Edison or the company) Report on 2006 Performance under Electric Service Reliability Performance Mechanism (2006 RPM Report). Specifically, the Commission will consider whether Con Edison has met all of the required performance standards set forth in the Joint Proposal of the company's current Rate Plan. Con Edison has stated that a revenue adjustment of \$18 million is applicable for failure to meet threshold standards for interruption duration and frequency in their network and radial system. The company states that it has met all other threshold targets, including targets for major outages, pole repairs, shunt removal, no current street-light repairs, and over duty circuit breaker replacement.

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

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

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

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

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

(04-E-0572SA13)

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

Submetering of Electricity by 90 William Street Development Group, LLC

I.D. No. PSC-29-07-00024-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 90 William Street Development Group, LLC, to submeter electricity at 90 William St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 90 William Street Development Group, LLC, to submeter electricity at 90 William St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 90 Williams Street Development Group, LLC, to submeter electricity at 90 William Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(07-E-0756SA1)

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

Deliverability Demand Determinants by Central Hudson Gas & Electric Corporation

I.D. No. PSC-29-07-00025-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 Central Hudson Gas & Electric Corporation (the company) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 12—Gas, to become effective Oct. 1, 2007.

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

Subject: Deliverability demand determinants.

Purpose: To provide the propane demand determinant used to determine incremental capacity requirements applicable to Service Classification Nos. 6, 12, and 13.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson or the company) request to revise the company's gas tariff to provide the propane demand determinant used to determine incremental capacity requirements applicable to S.C. No. 6 – Firm Transportation – Core, S.C. No. 12 – Aggregated Firm Transportation Rate - Residence and S.C. No. 13 – Aggregated Firm Transportation Rate – Commercial and Industrial. The Commission may approve, reject or modify, in whole or in part, Central Hudson'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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-G-0766SA1)

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

Waiver of Certain Preliminary Franchising Procedures by the Town of Decatur

I.D. No. PSC-29-07-00026-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 petition by the Town of Decatur (Otsego County) for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchising process.

Purpose: To allow the Town of Decatur to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Decatur (Otsego County) for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchising process.

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

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

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

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

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

(07-V-0541SA1)

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

Cable Television System by Empire Video Services Corporation, Town of Pembroke

I.D. No. PSC-29-07-00027-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 petition from Empire Video Services Corporation for a waiver of sections 895.1, 895.5(a), (b) and (c) of the commission's rules regarding buildout, primary service area and line extension policies for the Town of Pembroke (Genesee County).

Statutory authority: Public Service Law, section 222(1) and (3)

Subject: Waiver of sections 895.1 and 895.5(a), (b) and (c) of the commission's rules for Empire Video Services Corporation.

Purpose: To allow Empire Video Services Corporation to construct their cable television system within their telephone company's footprint, which will be their cable franchise area.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition to waive Sections 895.1, 895.5(a), 895.5(b) and 895.5(c) from Empire Video Services Corporation regarding buildout, primary service area and line extension policies for the Town of Pembroke (Genesee County).

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

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

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

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

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

(07-V-0721SA1)

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

**Cable Television System by Empire Video Services Corporation,
Town of Alabama**

I.D. No. PSC-29-07-00028-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 petition from Empire Video Services Corporation for a waiver of sections 895.1, 895.5(a), (b) and (c) of the commission's rules regarding buildout, primary service area and line extension policies for the Town of Alabama (Genesee County).

Statutory authority: Public Service Law, section 222(1) and (3)

Subject: Waiver of sections 895.1 and 895.5(a), (b) and (c) of the commission's rules for Empire Video Services Corporation.

Purpose: To allow Empire Video Services Corporation to construct their cable television system within their telephone company's footprint, which will be their cable franchise area.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition to waive Sections 895.1, 895.5(a), 895.5(b) and 895.5(c) from Empire Video Services Corporation regarding buildout, primary service area and line extension policies for the Town of Alabama (Genesee County).

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

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

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

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

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

(07-V-0722SA1)

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

**Cable Television System by Empire Video Services Corporation,
Town of Alexander**

I.D. No. PSC-29-07-00029-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 petition from Empire Video Services Corporation for a waiver of sections 895.1, 895.5(a), (b) and (c) of the commission's rules regarding buildout, primary service area and line extension policies for the Town of Alexander (Genesee County).

Statutory authority: Public Service Law, section 222(1) and (3)

Subject: Waiver of sections 895.1 and 895.5(a), (b) and (c) of the commission's rules for Empire Video Services Corporation.

Purpose: To allow Empire Video Services Corporation to construct their cable television system within their telephone company's footprint, which will be their cable franchise area.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition to waive Sections 895.1, 895.5(a), 895.5(b) and 895.5(c) from Empire Video Services Corporation regarding buildout, primary service area and line extension policies for the Town of Alexander (Genesee County).

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

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

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

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

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

(07-V-0761SA1)

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

Loan Agreement by Kiamesha Artesian Spring Water Company Inc.

I.D. No. PSC-29-07-00030-P

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

Proposed action: The commission is considering the petition of Kiamesha Artesian Spring Water Company Inc. for approval to enter into a loan agreement with Provident Bank of Sullivan County in the amount of about \$71,000 and for approval of a surcharge to repay this loan designed to produce about \$10,200 per year for a 10-year period.

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

Subject: Issue of stock, bonds and other forms of indebtedness; charges.

Purpose: To allow Kiamesha Artesian Spring Water Company Inc. to enter into a loan agreement and increase charges.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Kiamesha Artesian Spring Water Company, Inc. (the company) for approval to enter into a loan agreement with the Provident Bank of Sullivan County for approximately \$71,000. The loan will be for ten years at an interest rate of 7.5%. Additionally, in order to pay for the loan, the company has asked to initiate a surcharge in the amount of approximately \$10,200 per year. Proceeds from the loan will be used to settle claims against the company related to the bankruptcy of the Concord Hotel, once the company's largest customer.

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

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

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

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

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

(07-W-0768SA1)

Department of State

EMERGENCY RULE MAKING

Outline Requirements for Continuing Education Courses for Licensed Home Inspectors

I.D. No. DOS-29-07-00010-E

Filing No. 650

Filing date: June 29, 2007

Effective date: June 29, 2007

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

Action taken: Addition of Subpart 197-3 to Title 19 NYCRR.

Statutory authority: Real Property Law, section 444-f

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

Specific reasons underlying the finding of necessity: This rule was adopted on an emergency basis to preserve and enhance the public welfare. Art. 12-B of the Real Property Law (Home Inspection Professional Licensing Act, which became effective Dec. 31, 2005), requires that no person shall conduct a home inspection for compensation unless that person is licensed as a home inspector in accordance with requirements set forth in the statute, including meeting specific standards for education and experience. Further, § 444-f(1) of art. 12-B, requires that applicants for renewal of a license as a home inspector must complete a course of continuing education approved by the Secretary of State. Accordingly, to ensure that prospective applicants continue to meet the educational standards required for their profession, this rule has been adopted on an emergency basis. As such, it is similar to those required by other regulatory statutes, and provides a greater measure of assurance to the general public that home inspectors are qualified for licensure. As part of fulfilling its ongoing obligation to provide appropriate guidelines and standards for the profession, the state home inspection council has only recently adopted the number of course hours required for meeting the continuing education requirement, thus necessitating the adoption of this rule on an emergency basis.

Subject: Outline requirements for continuing education courses for licensed home inspectors.

Purpose: To establish standards for continuing education courses for licensed home inspectors.

Text of emergency rule: An Amendment to 19 NYCRR Part 197 is adopted to read as follows:

SUBPART 197-3

HOME INSPECTION CONTINUING EDUCATION COURSES

Section 197-3.1 General requirements.

(a) Renewals. No renewal license shall be issued to any home inspector for any license period commencing on or after December 31, 2007 unless such licensee completes 24 hours of approved continuing education within the two-year period immediately preceding such renewal, except those licenses expiring on or after December 30, 2007, but on or before December 31, 2008, shall be required to complete 6 hours of approved continuing education prior to application for renewal.

(b) Course approval. No offering of a course of study in the home inspection field for the purpose of compliance with the continuing education requirements of subdivision (a) of this section shall be acceptable for credit unless such course of study has been approved by the department under the provisions of this Part.

Section 197-3.2 Approved entities.

Continuing education home inspection courses may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by the Commissioner of Education; public or private schools; and home inspection related professional societies and organizations. The following types of instruction shall not be acceptable as meeting continuing education requirements:

(a) offerings in basic computer skills training, instructional navigation of the web, instructional use of generic computer software or industry specific report writing software, personal motivation, business marketing, salesmanship, radon and pests.

Section 197-3.3 Request for approval of course of study.

The following applies to courses to be presented in a class-room setting where the instructor is present with the class. Requests for approval of courses of study in the home inspection field to be given to satisfy the requirements for continuing education under the provisions of this Part shall be made 60 days before the proposed course is to be given. The request shall include the following:

- (a) name, address and telephone number of the applicant;
- (b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;
- (c) title of each course to be offered;
- (d) location of each course offered;
- (e) duration and time of each course offered;
- (f) procedure for taking attendance;
- (g) a detailed outline of the subject matter of each course or seminar containing at least one hour of instruction up to 24 hours of instruction, together with the time sequence of each segment thereof and teaching techniques used in each segment; and
- (h) description of materials to be distributed to the participants.

Section 197-3.4 Program Approval.

A sponsor of a course which is conducted on one day may file an application for approval within 30 days of the completion of the course. The sponsor must advise registrants that approval is not guaranteed.

Section 197-3.5 Successful completion of course.

(a) Any course for continuing education shall be accepted for credit on the basis of attendance only. The course administrator must submit to the department within 15 days of completion of the class, the names and unique identification numbers of all individuals who successfully complete the approved course.

(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificates must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the person authorized to sign certificates.

Section 197-3.6 Equivalency Credit.

(a) A licensee who teaches an approved home inspection course pursuant to Subpart 197-2 of this Part or an approved course offered for continuing education shall be credited with two hours for each hour of actual teaching performed. Records of such teaching shall be maintained by the person or organization presenting the course and certified on forms prescribed by the department. The records of such teaching shall be deemed records of attendance for all purposes of these rules. Credit shall not be awarded for teaching the same course more than once in a license cycle. Instructors must submit evidence of such teaching experience with an equivalency application.

(b) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the department, may file a request to the department for review and evaluation. All applicants for such consideration must be submitted with official documentation of satisfactory completion and the official descriptions of the course of study.

(c) All applications for and evidence of equivalency credit must be submitted to the department for consideration at least 30 days prior to the expiration of the license.

Section 197-3.7 Extension of time to complete courses.

The department may grant a waiver to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such a waiver shall submit a written request, together with the evidence demonstrating such hardship. The licensee will be notified if their extension has been granted.

Section 197-3.8 Computation of instruction time.

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 60 minutes.

Section 197-3.9 Attendance and Record Retention.

(a) No licensed person shall receive credit for any course presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course pursuant to section 197-3.3(g) of this Part, and no licensed person shall be absent from the class room except for a reasonable and unavoidable cause.

(b) The person or organization conducting the course shall certify to the department the name of each licensed person who successfully completed the course of study and his or her license unique identification number, and shall maintain its attendance records and a copy of such report for three years and, in addition, shall maintain the following records concerning the course:

(1) the approval number issued by the department for the course;

(2) title and description of the course;

(3) the dates and hours the course was given; and

(4) the names and Unique Identification numbers of the persons who took the course and whether they completed it successfully.

Section 197-3.10 Policies concerning course cancellation and tuition refund.

Any educational institution or other organization requesting from the Department of State approval for home inspection courses must have a policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

Section 197-3.11 Auditing.

A duly authorized designee of the department may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

Section 197-3.12 Change in approved course of study.

There shall be no change or alteration in any approved course of study without prior written notice to, and approval, by the department.

Section 197-3.13 Suspensions and denials of school approval.

The department may deny, suspend or revoke the approval of a home inspection school, if it is determined that they are not in compliance with the law and rules. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his designee.

Section 197-3.14 Open to public.

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any home inspection professional society or organization.

Section 197-3.15 Facilities.

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course.

Section 197-3.16 Faculty.

(a) Each instructor for an approved home inspection course of study must be approved by the Department of State. To be approved, an instructor must submit an application along with a resume reflecting three years of experience as a home inspector during which time the applicant has completed at least 250 home inspections.

(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.

Section 197-3.17 Continuing education credit.

No continuing education course will be considered for continuing education credit more than once within the two year cycle of renewal.

Section 197-3.18 Registration period.

Each registration or renewal period for approved programs or courses shall be for 12 months or a part thereof, said period to commence on January 1 or date thereafter and to continue until December 31.

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 September 26, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Kenneth L. Golden, Department of State, Office of Counsel, Division of Licensing Services, 80 S. Swan St., 10th Fl., Alfred E. Smith Office Bldg., Albany, NY 12201, (518) 486-4588, e-mail: kgolden@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law, enacted as Chapter 461 of the Laws of 2004, and amended by the Laws of 2005, ch. 225, provides that no person shall perform a home inspection for compensation unless that person is licensed as a home inspector. The statute sets forth minimum standards of education and

experience required to obtain a license as a home inspector. These include the successful completion of an extensive course of study of not less than one hundred forty hours, including at least forty hours of field-based inspections in the presence of a licensed home inspector, professional engineer or architect; performance of not less than one hundred home inspections under the direct supervision of a home inspector, professional engineer or architect; and passing a standardized written examination.

Real Property Law, § 444-f (1) provides that licenses for home inspectors shall be valid for two years, and are subject to renewal only after successful completion of a course of continuing education approved by the Secretary of State in consultation with the home inspection council. This rule fulfills that obligation by outlining the continuing education requirements for home inspectors, and setting appropriate standards for approval of home inspection courses. Accordingly, the Secretary of State has express authority to adopt this rule.

2. Legislative objectives:

In enacting Article 12-B of the Real Property Law, the legislature emphasized the significant role played by home inspectors, and the reliance consumers place upon their reports in purchasing homes, especially when encouraged to do so by mortgage lenders. Recognizing that not all persons providing this service may be reliable, this legislation was enacted to provide additional assurance to consumers that those individuals performing such inspections are qualified to do so. The statute sets minimum standards for their profession, which include an extensive course of study of not less than one hundred forty hours, including at least forty hours of field based inspections in the presence of a licensed home inspector, professional engineer or architect; the performance of not less than one hundred home inspections under the direct supervision of a home inspector, professional engineer or architect; and passing a standardized written examination. In addition, all applicants for renewal of a license must have successfully completed a course of continuing education approved by the Secretary of State.

Thus, Article 12-B was designed to "protect the public," especially from those who present themselves as qualified professionals, but without the necessary education and experience.¹ This rule re-enforces the stated objectives of the Legislature when it enacted Article 12-B, by providing appropriate standards for maintaining the skills required by professional home inspectors.

3. Needs and benefits:

Real Property Law § 444-f(1) requires all home inspectors seeking renewal of their licenses to have successfully completed a course of continuing education approved by the Secretary of State, in consultation with the home inspection council. By adopting this rule, the Department of State helps to ensure that all home inspectors who apply for renewal of their licenses will have had the opportunity to meet this statutory requirement.

In addition, consumers benefit from the assurance that persons hired to inspect the homes they purchase continue to meet the qualifications and experience needed to render professional service.

4. Costs:

a. Costs to regulated parties:

Licensees seeking renewal will be required to pay the cost of attending and completing an approved course of study for the required number of hours. Those costs have not been determined, but are not anticipated to exceed those charged by educational institutions providing instruction and training for continuing education in comparable professions.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation will be minimal, and administration of this rule will be accomplished using existing resources.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The rule requires that each applicant seeking renewal of a home inspector's license obtain and retain certificates as evidence of the successful completion of the required number of hours of continuing education.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

During regular meetings, the state home inspection council reviewed and considered various proposals for compliance with the statutory man-

date for continuing education standards, ultimately recommending approval of the number of hours, courses of study, and methods of ensuring compliance adopted by this rule.

9. Federal standards:

There are currently no federal standards requiring continuing education courses for licensed home inspectors.

10. Compliance schedule:

Applicants for renewal of a home inspector's license have two years in which to comply with the continuing education requirement, with a pro-rated reduction for renewal of licenses expiring less than two years from the effective date of this rule.

The Department of State anticipates that the Division of Licensing Services will be able to comply immediately with this rule.

¹McKinney's Session Laws of New York, 2005, p. 1951

Regulatory Flexibility Analysis

1. Effect of rule:

The rule affects all licensed home inspectors (individuals, firms, companies, partnerships, limited liability companies, or corporations) who seek renewal of a home inspector's license. Each such applicant will be required to expend the time and incur the costs of attending the required number of hours needed for successful completion of an approved course of continuing education, and obtain the certificate as evidence of successful completion of that requirement. However, it is not anticipated that this requirement will place an undue financial burden, or impose a hardship for those applicants seeking to maintain their qualifications for providing professional services to consumers.

The rule does not apply to local governments.

2. Compliance requirements:

Applicants seeking renewal of their licenses will be required to attend and complete an approved course of study of continuing education, and obtain certificates as proof of the successful completion.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

It is anticipated that small businesses will incur only the costs of any fees required for attending and completing an approved course of continuing education.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

It is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

The rule does not affect local governments.

6. Minimizing adverse economic impact:

It is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule, which would require the adoption of alternative practices.

The rule does not affect local governments.

7. Small business and local government participation:

Since the impact on small businesses will be minimal, and the rule would not affect local governments, the Department did not solicit public comment prior to the adoption of this rule. The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies equally to all licensed home inspectors in all areas of the state—urban, suburban and rural.

2. Reporting, recordkeeping and other compliance requirements:

Reporting and recordkeeping requirements are set forth fully in Section 2 of the Regulatory Flexibility Analysis for Small Business and Local Governments.

Applicants for renewal of a home inspector's license in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance as a result of this rule.

4. Minimizing adverse impact:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance requiring the adoption of alternative practices, as a result of this rule.

5. Rural area participation:

Since the impact on small businesses will be minimal and will apply equally throughout all areas of the state, whether urban, suburban or rural, the Department did not solicit comment prior to adoption of this rule. The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. As a result of enactment of Article 12-B of the Real Property Law, which became effective December 31, 2005, any person performing a home inspection for compensation in this state must obtain a license. Licenses are valid for two years, and may be renewed only upon successful completion of an approved course of continuing education. Inasmuch as this rule affects only those licensed home inspectors who seek renewal of license, it promotes employment opportunities by ensuring that only those qualified to provide this service, will be licensed.

State University of New York

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-29-07-00020-EP

Filing No. 660

Filing date: July 3, 2007

Effective date: July 3, 2007

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

Action taken: Amendment of section 302.1(d), (e), (g) and (h) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because increases in tuition must be effective for the Fall 2007 semester.

Subject: State University of New York tuition and fees schedule.

Purpose: To increase tuition for resident and nonresident students in the professional programs of physical therapy, dentistry, law and pharmacy.

Text of emergency/proposed rule: (d) Students enrolled in the professional program of pharmacy.

Tuition

(1) Students, New York State residents: [\$6,290] \$6,850 per semester or [\$4,193] \$4,567 per quarter.

(2) Students, out-of-state residents: [\$10,870] \$11,850 per semester or [\$7,247] \$7,900 per quarter.

(3) Special students, New York State residents: [\$524] \$571 per semester credit hour or [\$349] \$381 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$906] \$988 per semester credit hour or [\$604] \$658 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

* * * *

(e) Students enrolled in the professional program of law (J.D. and LL.M).

Tuition

(1) Students, New York State residents: [\$6,085] \$6,600 per semester or [\$4,057] \$4,400 per quarter.

(2) Students, out-of-state residents: [\$9,135] \$10,000 per semester or [\$6,090] \$6,667 per quarter.

(3) Special students, New York State residents: [\$507] \$550 per semester credit hour or [\$338] \$367 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$761] \$833 per semester credit hour or [\$508] \$556 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(g) Students enrolled in dentistry programs.

Tuition

(1) Students, New York State residents: [\$7,400] \$8,100 per semester or [\$4,933] \$5,400 per quarter.

(2) Students, out-of-state residents: [\$14,800] \$16,250 per semester or [\$9,867] \$10,833 per quarter.

(3) Special students, New York State residents: [\$617] \$675 per semester credit hour or [\$411] \$450 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$1,233] \$1,354 per semester credit hour or [\$822] \$903 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(h) Students enrolled in the professional program of physical therapy.

Tuition

(1) Students, New York State residents: [\$5,460] \$5,710 per semester or [\$3,640] \$3,807 per quarter.

(2) Students, out-of-state residents: [\$8,770] \$9,145 per semester or [\$5,847] \$6,097 per quarter.

(3) Special students, New York State residents: [\$455] \$476 per semester credit hour or [\$303] \$317 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$731] \$762 per semester credit hour or [\$487] \$508 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 30, 2007.

Text of rule and any required statements and analyses may be obtained from: Marti Anne Ellermmann, Senior Counsel, State University of New York, State University Plaza, S-331, Albany, NY 12246, (518) 443-5400, e-mail: Marti.Ellermmann@suny.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University. In accordance with Section 355(2)(h)(4) of the Education Law, no change in tuition can be made effective prior to enactment of the annual budget for the State University of New York. Chapter 53 of the Laws of 2007 enacted the appropriations for the operations of the State University of New York during the 2007-2008 fiscal year, including necessary tuition revenue.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in furtherance of its statutorily defined mission as set forth in Article 8 of the Education Law.

3. Needs and Benefits: The present measure establishes a series of tuition increases in certain professional degree programs of the State University of New York as necessitated by the 2007-2008 State Budget.

The tuition changes authorized by this measure affect certain professional schools within the State University of New York: the Schools of Law and Pharmacy at the State University of New York at Buffalo, the Schools of Dental Medicine and the Professional Programs in Physical Therapy at State University of New York at Buffalo and Stony Brook.

This measure is needed in order to provide essential financial support for specific professional programs of the State University of New York for the 2007-2008 fiscal year. The State University's cost for these professional programs exceeds the funding provided by tuition and State support. It should be noted that even with the recommended increases, the tuition charged by these University of New York programs is still competitive

when compared to similar programs at peer institutions in other university systems.

This amendment affects four professional programs within the State University of New York. Tuition for New York State residents at the School of Law will increase to \$13,200 per year (\$20,000 non-residents), and at the Pharmacy School to \$13,700 per year (\$23,700 non-residents).

The amendment also increases tuition for students in the professional dental program (D.D.S.) at the Universities at Buffalo and Stony Brook. Under this measure, tuition will increase \$1,400 per year for New York State residents and \$2,900 per year for nonresidents.

Finally, the amendment increases tuition for students pursuing the terminal Professional Degree in Physical Therapy. The new annual rate is \$11,420 for New York State residents and \$18,290 for nonresidents.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$500 per year for Doctor of Physical Therapy degrees to \$1,400 for the Schools of Dentistry. The tuition increases will affect students in these programs as shown:

	# Resident	\$ Increase	# Non-resident	\$ Increase
Dental	450	\$1400	53	\$2900
Pharmacy	306	1120	29	1960
Law	636	1030	90	1730
P. Therapy	259	500	18	750

5. Local Government Mandates: There are no local government mandates.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: There is no acceptable alternative to these increases given the 2007-2008 State Budget.

9. Federal Standards: None.

10. Compliance Schedule: Not applicable.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Access of Overdimensional/Overweight Vehicles on the Thruway

I.D. No. TRN-29-07-00019-A

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

Proposed action: This is a consensus rule making to add section 8160.00(c) to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 385(16)(r); and Transportation Law, section 14(18)

Subject: Access of overdimensional/overweight vehicles, including tandem trailers, to a 2.25 mile segment of highway in vicinity of designated I-26 of Thruway, Towns of Rotterdam/Glenville.

Purpose: To formalize the department's determination that overdimensional and overweight vehicles, including tandem trailers, could operate safely on such route.

Text of proposed rule: Section 8160.00 of Part 8160 of Title 15 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new subdivision (c) to read as follows:

(c) *Over a route extending east and west from the Exit 26 toll plaza of the New York State Thruway (I 90) to Exit 1B of I 890, and west and east on NY 890, and east and west on NY 5, and north and south on 7th Street into the Scotia-Glenville Industrial Park, a distance of approximately 2.25 miles in the Towns of Rotterdam and Glenville, Schenectady County.*

Text of proposed rule and any required statements and analyses may be obtained from: David Woodin, Department of Transportation, 50 Wolf Rd., P.O.D. 42, Albany, NY 12232, (518) 457-1793, e-mail: dwoodin@dot.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Transportation proposes the adoption of a new subdivision (c) to section 8160.00 of part 8160 of Title 15 of the Official Compilation of Codes, Rules and Regulations of the State of New York as a consensus rule. No person is likely to object because the proposed rule making merely implements a provision of the Vehicle and Traffic Law based upon specific determinations made by the Department. The statutory authority for this proposal is paragraph (r) of subdivision 16 of section 385 of the Vehicle and Traffic Law and subdivision 18 of section 14 of the Transportation Law. Section 385(16)(r) of the Vehicle and Traffic Law provides for the use of any route, such as a 2.25 mile section of highway in the Towns of Rotterdam and Glenville, Schenectady County, which is within a radius of 6,600 feet of designated Interchange 26 of the New York State Thruway, "where the commissioner of transportation determines that the vehicle or combination of vehicles could operate safely along the designated route and that no applicable federal law, regulation or other requirement prohibits the operation of such vehicle or combination of vehicles on such route." Section 14(18) of the Transportation Law authorizes the Department of Transportation to promulgate regulations related to the functions of the Department under State law.

The Vehicle and Traffic Law generally provides that vehicle combinations, such as tractor and tandem-trailer combinations, cannot exceed sixty-five feet in length and cannot exceed certain weight limitations. (Vehicle and Traffic Law, section 385 (4) and (10). The Public Authorities Law authorizes the New York State Thruway Authority to permit the use of the New York State Thruway by vehicle combinations exceeding these general limitations. (Public Authorities Law section 361; Vehicle and Traffic Law section 1630) An example of such vehicle combinations permitted by the Thruway Authority is the "thruway tandem" (a tractor towing twin forty-eight foot trailers). Subdivision 16 of section 385 of the Vehicle and Traffic Law provides that the dimensional limitations do not apply to vehicles "proceeding to or from the New York State Thruway" which are "in compliance with the maximum dimension and weight limitations applicable to New York State Thruway". Subdivision 16 of section 385 of the Vehicle and Traffic Law sets forth State and local highways on which such vehicles may travel. Paragraph (r) of subdivision 16 of section 385 of the Vehicle and Traffic Law provides that vehicles authorized to use the Thruway may also use "any route designated by the commissioner of transportation within a radius of six thousand six hundred feet of any exit or entrance designated interchange 26 of the New York state thruway, where the commissioner of transportation determines that the vehicle or combination of vehicles could operate safely along the designated route and that no applicable federal law, regulation or other requirement prohibits the operation of such vehicle or combination of vehicles on such route." This rule is proposed as the Department has determined that vehicles authorized to use the Thruway may safely traverse this specific additional 2.25 mile segment of highway which satisfies the aforesaid statutory parameters and the use of such additional highway segment is not prohibited by applicable Federal requirements.

As referenced above, Thruway tandem-trailers are authorized to use the New York State Thruway. When such tandem-trailers leave the Thruway and proceed on state or local routes that are not designated for their use, the trailers must be separated and towed by individual tractors. Such separa-

tion and separate towing increase costs of operation, as the individual trailers must be separated and moved by the use of two separate tractors. Accordingly, in the circumstances where roads adjacent to the Thruway may accommodate the use of tandem-trailers, the Legislature has authorized such use. By allowing the tandem-trailers to directly proceed to the Thruway to and from terminals, costs of operation are reduced.

The Department is not aware of any costs that this rule will impose on any governmental or other entities. Tandem-trailers are authorized under current law to use any additional routes within established statutory parameters which the Commissioner of Transportation determines could be operated safely. This regulation, consistent with the State law, would establish a limited 2.25 mile segment within those parameters and determined by the Commissioner of Transportation to be where such vehicles could be operated safely. While some additional tandem-trailers would travel over the new 2.25 mile segment where they have previously not been authorized, the wear and tear on the highway is not expected to increase because their loads are currently carried over that highway by separate tractors. The authorization could result in marginal loss of Thruway Authority toll revenue, but such loss would be minimal as only a limited number of Thruway tandem-trailers would utilize the additional 2.25 mile segment.

The Department is not aware of any program, service, duty or responsibility that this will impose upon any county, city, town, village, school district, fire district or other special district.

The Department is not aware of any need for any reporting requirements that would be created by this rule.

The Department is not aware of any duplication of this regulation with other State or Federal requirements. Federal requirements currently prohibit states from expanding the use of interstate highways, or highways designated as national network highways by the Federal Highway Administration pursuant to Federal law, for use by longer combination vehicles. Said highway segment is not an interstate highway and is not on the national network as designated by the Federal Highway Administration pursuant to 23 CFR Part 658, Appendix A.

The alternative to this rule making would be not to authorize those vehicles permitted to use the Thruway to use the additional 2.25 mile segment of highway in the statutorily allowed vicinity of New York State Thruway Interchange 26 in the Towns of Rotterdam and Glenville, Schenectady County. Pursuant to paragraph (r) of subdivision 16 of section 385 of the Vehicle and Traffic Law, the only basis for this alternative would be a finding by the Commissioner of Transportation that such vehicles could not safely operate on the highway or that Federal requirements prohibit their use. As the Department has determined that the vehicles may operate safely on this route and that their operation would be consistent with Federal requirements, there would be no basis for this alternative.

Federal standards set forth in 49 U.S.C. § 31112(b) and 23 CFR 658.23(a) provide that states may not expand the use of interstate and national network highways by longer combination vehicles, such as Thruway tandems. Additionally, 23 U.S.C. 127(d) prohibits states from expanding the use of interstate highways by longer combination vehicles with excess weights. Since said highway segment is not an interstate highway and has not been designated as a national network highway by the Federal Highway Administration, these standards do not apply. The Department is not aware of any applicable Federal standards or requirements in this matter.

This rule making would become effective upon adoption. Thruway tandems, and other vehicles permitted to operate on the Thruway, would be permitted to utilize the additional 2.25 mile segment of highway at that time.

Job Impact Statement

A Job Impact Statement is not submitted because the proposed rule, by its nature, would not have a substantial adverse impact on jobs and employment opportunities. Prior to examining drivers' work patterns, one might expect the rule to cause marginal impact by requiring fewer driver hours than are now necessary to haul the trailers to alternative, less convenient locations for separation and assembly. However, any marginal adverse impact on employment is negated since adoption of the proposed rule would likely allow drivers to use those same driver hours to earn commensurate or increased compensation while performing over-the-road duties.

We expect that implementation of the proposed rule would expedite service, timeliness and customer benefits. Increased company efficiencies would result in commensurate increases in capacity, which could create opportunities for additional qualified drivers and support personnel.

Urban Development Corporation

EMERGENCY RULE MAKING

Empire State Economic Development Fund

I.D. No. UDC-29-07-00015-E

Filing No. 658

Filing date: June 29, 2007

Effective date: June 29, 2007

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

Action taken: Amendment of Part 4243 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 1994, ch. 169; and L. 2001, ch. 471

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires clarification of the rule and elimination of inconsistencies in the rule.

Subject: Economic development and job creation throughout New York State.

Purpose: To provide the framework for administration of The Empire State Economic Development Fund, evaluation criteria, terms and conditions, and the application and evaluation process; and make changes to expand the types of program assistance.

Substance of emergency rule: The Empire State Economic Development Fund (the "Program") was created pursuant to Chapter 309 of the Laws of 1996 as amended by Chapter 432 of the Laws of 1997 and Chapter 471 of the Laws of 2001 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-m and 16-l of the New York State Urban Development Corporation Act (the "UDC Act") which govern the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

b) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

c) Competitiveness Improvement Program for Competitiveness Improvement projects.

d) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

e) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

f) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

g) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

h) Rural Revitalization Program to support community economic development programs and activities including value added small business growth, agricultural, agribusiness and forest products and those projects that promote the family farm, increase or retain employment opportunities and otherwise contribute to the revitalization of local rural areas which are economically distressed.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-l of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire September 26, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792

Regulatory Impact Statement

1. Statutory Authority:

Chapter 84, Laws of 2002 (Unconsolidated Laws, Section 6266-m), which was originally enacted by Chapter 309, Laws of 1996 and amended by Part M1 Section 5 of the Article VII Bill of the Budget of 2003, authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement The Empire State Economic Development Fund (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers private businesses, government entities and not-for-profit entities various forms of assistance, including loans, loan guarantees and grants. Chapter 471, Laws of 2001, (Unconsolidated Laws, Section 6266-l) authorized the Corporation to extend this type of assistance to eligible beneficiaries in rural areas of the State. Chapter 236, Laws of 2004 added micro business revolving loan assistance for rural development. Section 5(4) of the New York State Urban Development Corporation Act (Unconsolidated Laws, Section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with Section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention

of jobs or increasing business activity within municipalities or regions of the State.

3. Needs and Benefits:

Currently, the Program's legislation assists job creation throughout the State by providing the following types of assistance:

1) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

2) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

3) Competitiveness Improvement Program for Competitiveness Improvement projects.

4) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

5) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

6) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

7) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

8) Rural Revitalization Assistance grants or contracts for services, on a competitive basis in response to requests for proposals, to eligible entities and organizations to support community economic development programs and activities which increase or retain employment opportunities in rural New York State and otherwise contribute to the revitalization of local rural areas which are economically distressed through innovative activities designed to generate economic alternatives and opportunities in rural areas.

The proposed change will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be

used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

1. Evaluation Criteria – The Corporation, will continue to review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The changes should not increase costs for the Program.

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of Rule:

The amended Rule will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule expands the types of assistance available under the Program. Specifically, the proposed Sections 4243.40-4243.41 allow for grants for the purpose of developing a statewide infrastructure that delivers financing and technical assistance to micro businesses across the state to stimulate new and existing micro business development relating to the use of agricultural products, forest products, cottage and crafts industries, tourism, and other businesses as provided for in subparagraph (i) of paragraph (e) of subdivision 2 of Section 16-1 of the section 1 of chapter 174 of the laws of 1968 and 4243.39(a)(4)(i) of this Part, provided such business employs five or fewer full-time persons and is based on the production, processing, and/or marketing of products grown or produced in New York State.

Additionally, the proposed Sections 4243.42-4243.44 provide emergency General Development Financing working capital grant assistance to small businesses, not-for-profit entities, and large businesses that were damaged by the floods that occurred in Southern Tier, Mid-Hudson, Capital and Mohawk Valley Regions and surrounding vicinity of the State of New York during the week of June 26, 2006.

Furthermore, the proposed Sections 4243.45-4243.46 allow for General Development Financing working capital assistance exclusively to State agencies and authorities that own or operate facilities used in connection with the tourism industry. With respect to this type of assistance, costs may be incurred before the application date and before the receipt of a program acceptance letter for such assistance and such assistance may be

used for the reduction and repayment of outstanding debt, including payment of any tax or employee benefit arrearages, or to create a reserve for future costs and expenses.

This should not affect the Program's accessibility to small business.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the amended rule.

5. Economic and Technological Feasibility:

The Rule makes The Empire State Economic Development Fund assistance feasible for small businesses, by expressly stating that small businesses are eligible for certain types of program assistance while permitting small businesses access to all other types of program assistance for which they may be eligible, notwithstanding the size of such businesses. The Rule also makes the program assistance feasible for local governments by expressly stating that government entities and municipalities are eligible for program assistance. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts with the program. There are no aspects of the Rule that make The Empire State Economic Development Fund assistance or the Rule technologically infeasible for small business or local government.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Empire State Economic Development Fund emphasizes the effective provision of economic development throughout New York State. Small business may participate by requesting assistance when the requisite eligibility criteria are met. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

EMERGENCY RULE MAKING

Restore New York's Communities Initiative

I.D. No. UDC-29-07-00016-E

Filing No. 659

Filing date: June 29, 2007

Effective date: June 29, 2007

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

Action taken: Addition of Part 4245 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968; ch. 174; L. 1994, ch. 169; and L. 2001, ch. 471

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of the rule. The assistance is necessary to address the dangers to public health, safety and welfare posed by vacant, abandoned, surplus or condemned buildings in municipalities.

Subject: Economic development and job creation throughout New York State and preservation of public health and public safety via the demoli-

tion, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

Purpose: To provide the framework for administration of the restore New York's Communities Initiative evaluation criteria, terms and conditions, and the application and evaluation process.

Substance of emergency rule: The Restore New York's Communities Initiative (the "Program") was created pursuant to Chapter 109 of the Laws of 2006 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-n of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire September 26, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792

Regulatory Impact Statement

1. Statutory Authority:

Chapter 109, Laws of 2006 (Unconsolidated Laws, Section 6266-n. Another Unconsolidated Laws Section 6266-n was added by another act) authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Needs and Benefits:

The Program's legislation assists job creation throughout the State by providing the following types of assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction

and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

1. Evaluation Criteria – The Corporation, will review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability of the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation’s overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation’s clients.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York’s Communities Initiative (the “Program”) to promote economic development in the State by encouraging economic and employment opportunities for the State’s citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York’s Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The Program promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the proposed Rule.

5. Economic and Technological Feasibility:

The Rule makes the Program assistance feasible for local governments, by expressly stating that municipalities are eligible for certain types of

Program assistance while permitting local governments access to all other types of Program assistance for which they may be eligible. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. The Corporation will work with local governments to identify problem areas and make grant applications available.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

Workers’ Compensation Board

EMERGENCY RULE MAKING

Independent Medical Examinations

I.D. No. WCB-29-07-00021-E

Filing No. 661

Filing date: July 3, 2007

Effective date: July 3, 2007

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

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

Statutory authority: Workers’ Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: Recent decisions issued by board panels have interpreted the current regulation as requiring reports of independent medical examinations (IMEs) be received by the board within 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 September 30, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Esq., Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 486-9564, e-mail: OfficeofGeneralCounselwcb.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, chiropractors, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

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

3. Needs and benefits:

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

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to

Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

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

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

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

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

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

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

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

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

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

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

2. Reporting, recordkeeping and other compliance requirements:

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

new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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