

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

Agricultural and Farmland Protection Planning Grants

I.D. No. AAM-24-07-00002-P

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

Proposed action: This is a consensus rule making to amend Part 390 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 325

Subject: Agricultural and farmland protection planning grants.

Purpose: To include municipalities as eligible applicants in the Agricultural and Farmland Protection Planning Grant Program.

Text of proposed rule: Section 390.1 is amended to read as follows:

This Part establishes the requirements for county *and municipal* agricultural and farmland protection plans, the procedures for development and approval of such plans and the application process for planning grants to assist counties *and municipalities* in the development of such plans.

Subdivision (f) of section 390.2 is amended to read as follows:

(f) Plan means the county *or municipal* agricultural and farmland protection plan, [as] prepared by [the] a county agricultural and farmland protection board *or a municipality*, as provided for in article 25-AAA of the Agriculture and Markets Law.

A new subdivision (h) of section 390.2 is added to read as follows:

(h) *Municipality* means a city, town or village.

Section 390.4 is renumbered section 390.5 and amended, and a new section 390.4 is added to read as follows:

Section 390.4 Municipal agricultural and farmland protection plans.

(a) *Plans. Municipalities may develop agricultural and farmland protection plans, in cooperation with cooperative extension and other organizations, including local farmers. These plans shall include at least the following elements:*

(1) *a statement of the municipality's goal(s) with respect to agricultural and farmland protection (e.g., to stabilize or enhance the agricultural economy of the municipality; preserve open space; abate land conversion pressure; maintain community goals with respect to development and growth; and protect natural resources such as air quality, watersheds, aquifers, or wildlife);*

(2) *an identification of the general location of any lands or other designation of areas that are proposed to be protected (e.g., the whole municipality, all agricultural district lands within the municipality, farms or farmlands in particular section of the municipality). Specific tracts of land or farms need not be identified. Maps are not mandatory but may be used at the discretion of the municipality to illustrate strategies or to explain the plan more completely;*

(3) *an analysis of the lands or areas to be protected, such as their value to the agricultural economy of the municipality, their open space value, the level of conversion pressure being experienced, and the consequences of possible conversion;*

(4) *a description of activities, programs and strategies intended to be used by the municipality to promote continued agricultural use, including how they are to be financed, and which may include but not be limited to revisions to the municipality's comprehensive plan pursuant to section 272-a subdivision 2(a) of the Town Law and land use regulations as defined in section 272-a subdivision 2(b) of the Town Law as appropriate; and*

(5) *a description or identification of other municipal and county planning and land use programs, if any, such as economic development, zoning and comprehensive land use planning, which may be shown to complement and be consistent with, the municipal agricultural and farmland protection plan, as well as identification of any municipal and county plans, policies or objectives which are inconsistent with or conflict with the plan.*

(b) *Planning and approval process. In developing an agricultural and farmland protection plan, the municipality shall follow the planning and approval process in sequence as follows:*

(1) *the municipality shall conduct at least one public hearing to solicit citizen views and recommendations;*

(2) *the municipality shall undertake specific efforts to involve members of the farm community in the planning process, and to assure that the final plan is made available to the farm community for comment before it is approved;*

(3) *the municipality shall consult with the department throughout the planning process;*

(4) *the municipality shall submit the proposed plan to the municipal legislative body and the agricultural and farmland protection board for the county in which the municipality is located for approval.*

(5) *municipal legislative body approval of the plan shall be documented by a resolution;*

(6) *plans of work must be completed within 24 months to be eligible for State matching grants under this program, unless said period is ex-*

tended by written agreement between the municipality and the department; however, the municipality legislative body need not approve the final plan within 24 months;

(7) the municipality shall submit the plan to the commissioner for approval. The commissioner shall act upon the plan within 45 days of receipt of the document, and notify the municipality of the plan's approval or disapproval. A copy of the commissioner's decision shall be sent to the chair of the agricultural and farmland protection board for the county in which the municipality is located.

(c) Plan review process. The following criteria shall be used by the commissioner to determine the acceptability of a municipal agricultural and farmland protection plan:

(1) the consistency of the plan with State agricultural and farmland protection plans, policies and objectives; State environmental plans, policies, and objectives; and State comprehensive plans, policies, and objectives;

(2) the consistency of the plan with county and municipal plans, policies, and objectives which the plan could affect;

(3) the practicality of the plan (i.e., the extent to which it can reasonably be expected to meet the identified municipality goal(s) for agricultural and farmland protection);

(4) the extent to which the plan satisfies the analytical factors addressed under section 324-a of the Agriculture and Markets Law;

(5) the adequacy of substantiating data, information, and facts;

(6) the cost implications of the protection measures identified in the plan (i.e., what can be accomplished recognizing limited state/local funding mechanisms in view of the public benefit to be derived from protection of agriculture and agricultural lands); and

(7) whether the municipal legislative body has approved the plan.

Section 390.5 Planning Grants.

(a) Matching grants program. Subject to the availability of funds, the [Department of Agriculture and Markets] department shall maintain a matching grants program intended to assist counties and municipalities in the development of agricultural and farmland protection plans.

(b) Applications. Applications for State matching funds shall be submitted to the department by the county's agricultural and farmland protection board or two such boards acting jointly, or the municipality or two such municipalities acting jointly. Applications may be submitted to the department at any time. A county may not make application for funds until it has established its agricultural and farmland protection board and a chairperson for such board has been elected. A municipality may not make application for funds until the county in which the municipality is located has established its agricultural and farmland protection board and a chairperson for such board has been elected. All planning grant applications made to the department shall contain at least the following information:

(1) the name of the county or the municipality applying;

(2) the identification of the county agricultural and farmland protection board chair (name, address, and telephone number);

(3) the identification of an individual to be contacted concerning information contained within the application (name, address, and telephone number);

(4) a summary statement of the trends and conditions in the county or the municipality that warrant agricultural and farmland protection measures;

(5) a description of the agricultural setting in the county or the municipality including:

(i) the approximate number and types of farms in the area which is the subject of the plan;

(ii) the present and future prospect for farm viability in the county or the municipality; and

(iii) other indications of the economic conditions and importance of agriculture to the county or the municipality.

(6) a detailed description of the plan of work to be followed in developing the county or the municipal plan;

(7) the anticipated timeframe for completing the plan of work;

(8) a budget detailing the cost of developing the plan, including itemization of costs to be charged against State versus county or the municipal matching resources available to the board or the municipality by individual budget category;

(9) a description of in-kind services to be used for up to 80 percent of the required match;

(10) evidence of the availability of matching funds (such as a copy of a resolution, a copy of a portion of the county or the municipal budget that demonstrates that the matching funds have been earmarked for such activi-

ties, a letter from the county or the municipal executive that the county or the municipality has appropriated matching funds, or a copy of letter[s] from an external granting agency that funding is provided to the county or the municipality, or its agent, for the development of the plan);

(11) Signature of the chair of the county or the municipal legislative body; and

(12) the qualifications of the principals who will be developing the plan including experience in developing agricultural protection sections of comprehensive plans and land use regulations.

(c) Review and approval.

(1) The commissioner shall review all requests for grant funding in consultation with the advisory council on agriculture. Criteria to be used by the commissioner in determining approval of applications are as follows:

(i) the responsiveness of the grant application to the analytical factors required under section 324 or section 324-a of the Agriculture and Markets Law;

(ii) the degree to which the need for agricultural protection by the county or the municipality is substantiated by facts and trends;

(iii) the adequacy of the plan of work (e.g., does it relate to the needs identified, is it logically constructed, and can it be accomplished within the timeframe predicted);

(iv) the qualifications of the principals who will be developing the plan;

(v) the reasonableness of the estimated cost of developing the plan versus the work to be performed;

(vi) overall compliance with procedural requirements of article 25-AAA of the Agriculture and Markets Law; and

(vii) the completeness of the application.

(2) The commissioner, in consultation with the advisory council on agriculture, shall determine whether or not an application shall receive funding within 90 days from the receipt of a complete application. The commissioner may negotiate the amount of funds awarded versus funds requested. The standard for determining the amount of funds awarded is the extent to which the plan meets the criteria set forth in paragraph (1) of this subdivision, as well as mutually acceptable modifications of the application and/or plan of work, and the availability of funds in relation to the number of eligible applications received.

(d) Eligible costs. The following costs shall be eligible for State reimbursement:

(1) personal services, including fringe benefits for professional, secretarial, and legal services related directly to the development of the plan;

(2) consultant services;

(3) travel;

(4) conducting public hearings;

(5) expendable supplies;

(6) printing; and

(7) communication.

State planning grant funds shall not be made available for the purchase of equipment, non-expendable supplies, or implementation of measures recommended in a plan.

(e) Funding limits and matching requirements. State grant funds shall not exceed \$50,000 to each county or \$100,000 to two counties applying jointly and shall not exceed 50 percent of the total cost of preparing a county agricultural and farmland protection plan, or \$25,000 to each municipality or \$50,000 to two municipalities applying jointly and shall not exceed 75 percent of the total cost of preparing a municipal agricultural and farmland protection plan. Sum total of State grants shall not exceed \$50,000 per county or \$25,000 per municipality regardless of whether that county or that municipality receives only one award or multiple awards. County funds must match State funds at least on a one-to-one basis and at least 20 percent of its contribution must be cash (i.e., for initial as well as each supplemental county funding). For example, 20% of 50% of \$50,000 equals a \$5,000 cash contribution from the county. Municipal funds must match state funds at least on a one-to-three basis and at least 20 percent of its contribution must be cash (i.e., for initial as well as each supplemental municipal funding). For example, 20% of 25% of \$25,000 equals a \$1,250 cash contribution from the municipality. In-kind services matches are acceptable for all eligible costs categories identified in subdivision (d) of this section, as well as for those items set forth in the definition of in-kind services in section [372.2(g)] 390.2(g) of this Part. Indirect and overhead charges and volunteer services are not acceptable as match. Counties or the municipalities are authorized to use as a match any private or other public (non-State) funds obtained to develop a plan.

(f) Funding and reporting requirements. The department shall provide all funds to the county *or the municipality* through a written contract, [which shall be subject to approval by the State Comptroller and Attorney General,] and shall incorporate the plan of work and approved budget. All funds to the county *or the municipality* under the contract shall be paid only after submission of a State standard voucher by the county *or the municipality*, which shall be subject to approval by the State Comptroller and the availability of funds. At the commissioner's discretion, an advance of up to 25 percent of the total State funds awarded may be made under the contract to the county *or the municipality* to initiate plan development. Whether an advance will be made, and the amount of same, is based upon the county's *or the municipality's* written request for an advance and statement of need, including the percentage of the funds requested, and the commissioner's determination that the advance is necessary for the county *or the municipality* to initiate plan development. Thereafter, the remaining State funds will be provided on a reimbursement basis subject to the submission of quarterly progress reports. Ten percent of all State funds awarded shall be withheld until the commissioner verifies that the entire plan of work is completed.

Text of proposed rule and any required statements and analyses may be obtained from: William Kimball, Director Agricultural Protection and Development Services, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-7076, e-mail: bill.kimball@agmt.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

This rule is proposed as a consensus rule, within the definition of that term in State Administration Procedure Act section 102(11) pursuant to the expectation that no person is likely to object to its adoption.

Agriculture and Markets Law sections 324-a, and 325 (L. 2005, C. 527) direct that state assistance for agricultural and farmland protection planning activities be made available to municipalities. The proposed adoption of the rule implements this legislative directive by including municipalities as eligible entities to receive financial and technical assistance for agricultural and farmland protection efforts pursuant to Part 390 of 1 NYCRR.

Job Impact Statement

The proposed amendment to Part 390 of Title 1 NYCRR would amend the regulations governing State assistance payments for agricultural and farmland protection. The rule would not have a substantial adverse impact on jobs and employment activities. The rule specifies the requirements for municipalities to apply for State agricultural and farmland protection grants. This will benefit agricultural producers and the local economy by encouraging and promoting agricultural use of farmland within municipalities.

Office of Children and Family Services

NOTICE OF ADOPTION

Domestic Violence Shelter
I.D. No. CFS-13-07-00018-A
Filing No. 536
Filing date: May 23, 2007
Effective date: June 13, 2007

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

Action taken: Amendment of section 452.10 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 383-c, 384, 409-e and 459-g; L. 2002, ch. 178

Subject: Require that information regarding the location or address of a domestic violence shelter be kept confidential, pursuant to Social Services Law section 459-g.

Purpose: To bring regulations into compliance with statutory mandates for confidentiality of the location and address of a domestic violence shelter.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-13-07-00018-P, Issue of March 28, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

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

Jurisdictional Classification

I.D. No. CVS-24-07-00003-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.

Purpose: To classify positions in the exempt class in the Department of Law.

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 Law, by increasing the number of positions of Assistant Attorney General from 600 to 620.

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

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

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

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-24-07-00004-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) 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 of the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Director, National Purple Heart Hall of Honor (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) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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-24-07-00005-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 delete positions from the non-competitive class in the Department of State.

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 Department Service under the subheading "All State Departments and Agencies," by deleting therefrom the title of Elevator Operator.

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

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

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

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.

Department of Correctional Services

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

Packages and Articles Sent or Brought to Institutions

I.D. No. COR-24-07-00008-EP

Filing No. 541

Filing date: May 29, 2007

Effective date: May 29, 2007

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

Action taken: Repeal of Part 724 and addition of new Part 724 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

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

Specific reasons underlying the finding of necessity: Packages have represented a window through which inmates and their external sources have attempted to transmit contraband items such as drugs, money and

articles which can be used as or converted to weapons. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products. When such items are successfully smuggled into a correctional facility, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

Accordingly, the department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, previously presented at section 724.4 of this regulation, has been removed. The listing, which has always been printed as part of the department's internal directive #4911, "Packages and Articles Sent or Brought to Institutions," will henceforth be viewable on the department's website and, as before, posted in facilities and available to inmates at facility libraries. The department will be able, thereby, to quickly alter the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

Concurrently, the remainder of Part 724 is amended to reflect procedures designed to enhance security, guard against abuse of package privileges and prevent importation of contraband into correctional facilities.

In view of the potential harm to public safety which may arise from abuse of inmate packages privileges, the department has concluded that this rule should be implemented on an emergency basis.

Subject: Packages and articles sent or brought to institutions.

Purpose: To update procedures consistent with security needs.

Substance of emergency/proposed rule (Full text is not posted on a State website): PACKAGES AND ARTICLES SENT OR BROUGHT TO INSTITUTIONS

This Part formerly consisted of four sections, 724.1 through 724.4. It now consists of five sections with the addition of a new section 724.2 on applicability, identifying which inmates and facilities may receive packages in accordance with this Part.

Section 724.3, "Policy" (formerly 724.2), has been greatly expanded. New material is summarized as follows:

Subdivision (a).

- Paragraph (3) restricts received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits;

- Paragraph (4) defines the value of an article as the actual purchase price, excluding tax, shipping or handling costs;

- Paragraphs (5) and (6) clarify procedures for disposition of previously received package items which subsequently become disallowed;

- Paragraph (7) specifies that the department is not responsible for articles damaged in shipping or received in spoiled condition;

- Paragraph (8) provides for a record of return-to-sender transactions.

Subdivision (b).

- Paragraphs (1) through (4) specify search procedures, including a procedure for handling items of religious significance;

- Paragraphs (5) and (6) define contraband and articles not permitted and include procedures for disposition;

- Paragraph (7) prohibits alteration of items once received;

- Paragraph (8) provides for review and disposition of items withheld by staff because of non-conformance with specifications.

Subdivision (d).

- Paragraph (1) adds procedures for disposition of packages not having return addresses;

- Paragraph (2) expands procedures for sending a package out of a facility at an inmate's request.

Subdivision (e) – limits receipt of art and handicraft supplies.

Subdivision (f) – explains procedures for handling packages brought by visitors.

Subdivision (g).

- Paragraph (2) requires that a received article valued at over \$20 must be accompanied by a receipt or bill;

- Paragraph (4) establishes special watch procedures to guard against importation of contraband in packages addressed to inmates who have been identified with contraband or drug-related misbehavior;

Subdivision (h).

- Paragraph (2) specifies that an inmate who orders a package while under a "loss of package" disciplinary disposition must pay to have it returned to sender.

Subdivision (i) provides for disposition of packages received for inmates in SHU.

Subdivision (j) provides for processing and forwarding or disposition of packages received for inmates who have been transferred or are temporarily away from a facility.

Section 724.4, "Local permits" (formerly 724.3), has not changed except for the following addition at paragraph (5): "If a permit is revoked, the article will be confiscated and disposed of at the inmate's expense in accordance with the departmental directive on inmate personal property limits."

Section 724.5, "Listing of approved items" (formerly 724.4, "Allowable Items") is completely changed. The department will no longer list items in this regulation because of the necessity of making changes as security needs require and on an expeditious basis. The new section is printed here in its entirety.

§ 724.5 Listing of approved items.

(a) The department shall promulgate a detailed listing of items approved for receipt by inmates through facility package rooms. This listing shall be appended to the departmental directive #4911, "Packages and Articles Sent or Brought to Institutions," made available to inmates in all facility libraries, posted in all facility package rooms and visiting rooms, and posted on the department's website at www.docs.state.ny.us/directives/4911.pdf

(b) This listing only identifies items which may be received through the package room and sets forth the conditions and restrictions for receipt of those items; this listing is not a comprehensive list of all items that an inmate may be authorized to possess.

(c) This list will be periodically updated and amended, consistent with the needs of the department.

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 August 26, 2007.

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.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.

Regulatory Impact Statement

Statutory Authority:

Section 112 of the Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibility to make rules and regulations for the government of correctional facilities and discipline of inmates.

Legislative Objectives:

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to determine if inmates may receive packages from family members and other outside sources and, if allowed, to implement procedures to ensure that the privilege is not abused.

Needs and Benefits:

Inmates have long enjoyed the privileges of receiving packages from family and visitors and of ordering consumer goods from a list of approved articles. Packages, however, have represented a window through which inmates and their external sources have attempted to obtain contraband items such as drugs, money and articles which can be used or converted to weapons. Needless to say, when such items are successfully smuggled in, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

The Department has preserved these privileges despite the increasing sophistication of those who would attempt to smuggle contraband via packages. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, which has always been presented at section 724.4, has been removed and is being published in more rapidly changeable venues, including posting at the Department's website. The department will be able, thereby, to quickly alter the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

The remaining text has been thoroughly overhauled to ensure that package privileges are maintained for most inmates and that all related

procedures serve the department's security interests. These detailed policies and procedures are currently implemented at department facilities and are posted and available to inmates.

Significant changes from the repealed text include: addition of a section on applicability, clarifying which inmates and facilities may receive packages in accordance with this Part; restriction of received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits; clarification of procedures for disposition of disallowed items; enhanced package-related record keeping; clarification of package and item search procedures; definitions of contraband and articles not permitted; a procedure for review of items withheld by staff because of non-conformance with specifications; procedures for sending packages out of a facility; procedures for handling packages brought with visitors; special watch procedures to guard against importation of contraband; procedures for handling packages for inmates in special housing units and for inmates who have been transferred or are temporarily away from a facility.

Costs:

a. To State government: None.

b. To local governments: None. The proposed amendment does not apply to local governments.

c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.

d. Costs to the regulating agency for implementation and continued administration of the rule:

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

b. Additions to existing reporting or application forms: None.

c. New or addition recordkeeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

There are no new mandates imposed upon local governments by this proposal. The proposed amendment does not apply to local governments.

Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

Alternatives:

The department has considered eliminating package privileges or severely restricting the number and circumstances under which packages may be received by inmates. It has concluded that such privileges represent a significant connection between inmates and their families and friends and, as such, have rehabilitative and quality-of-life value. As explained under "Needs and Benefits," the chosen course of action intends to maintain package privileges for most inmates while strengthening the procedures designed to ensure that these privileges are not abused and do not compromise security.

No other alternatives have been proposed or considered.

Federal Standards:

There are no minimum standards of the Federal government for this of a similar subject area.

Compliance Schedule:

The Department of Correctional Services is in compliance with this proposed rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Education Department

EMERGENCY RULE MAKING

Fingerprinting and Criminal History Record Check

I.D. No. EDU-24-07-00026-E

Filing No. 547

Filing date: May 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 sections 80-1.11, 87.1, 87.2, 87.4, 87.5, 87.6, 87.8 and addition of section 87.10 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(30), 3001-d and 3035

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

Specific reasons underlying the finding of necessity: Chapter 630 of the Laws of 2006, which was signed by the Governor on August 16, 2006, becomes effective on July 1, 2007 and amends sections 305 and 3035 of the Education Law and adds a new section 3001-d to the Education Law, authorizing nonpublic and private elementary and secondary schools to apply to the Commissioner of Education for criminal history record checks of prospective employees and provides for the conditional appointment of such employees.

The proposed amendment is needed to establish a process that nonpublic and private elementary or secondary schools must follow in order to elect to submit requests for criminal history record review of prospective employees to the Department. The proposed amendment is also needed to change the definition of covered school in Part 87 to include nonpublic or private schools that elect to have their prospective employees undergo a criminal history record check by the Department and to authorize nonpublic and private schools to seek a clearance for employment, a conditional appointment, a conditional clearance for employment or an emergency conditional appointment for their prospective employees from the Commissioner, in order to implement the requirements of Chapter 630 of the Laws of 2006.

Emergency action is necessary for the preservation of the general welfare to permit the implementation of the new statutory requirements for the fingerprinting and the criminal history record check of prospective nonpublic and private school employees by the effective date of the new law, July 1, 2007, thereby permitting nonpublic or private schools to hire personnel in a timely manner for the new school year if the school elects to be subject to these requirements.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the July 2007 Regents Meeting.

Subject: Fingerprinting and criminal history record check of prospective employees of nonpublic and private elementary or secondary schools.

Purpose: To set forth the requirements and procedures for the fingerprinting and criminal history record check of prospective school employees for nonpublic and private elementary or secondary schools in order to implement the requirements of chapter 630 of the Laws of 2006.

Substance of emergency rule: The Board of Regents proposes to amend Sections 80-1.11, 87.1, 87.2, 87.4, 87.5, 87.6, 87.8 and add Section 87.10 to the Regulations of the Commissioner of Education relating to the authorization of nonpublic and private elementary schools to apply to the Commissioner of Education for criminal history record checks on prospective employees.

Section 80-1.11 is amended to delete the exception from the requirements of Part 87 for a criminal history record check for individuals who apply for a permanent certificate and hold a valid provisional certificate, applied for prior to July 1, 2001, in the same title for which a permanent certificate is sought.

Section 87.1 is amended to clarify that the purpose of Part 87 is to set forth the requirements and procedures for the fingerprinting and criminal history record review for prospective school employees for service in covered schools, including any nonpublic or private elementary or second-

ary school that elects to fingerprint and seek a criminal history record review from the Department for its prospective employees.

Subdivisions (a), (b) and (d) of Section 87.2 are amended to clarify the definitions of clearance for certification, clearance for employment and conditional clearance for employment so that these definitions include nonpublic or private elementary and secondary schools that elect to apply to the Department for criminal history record checks on prospective employees.

Subdivision (c) and (j) of Section 87.2 is amended to provide the statutory authority for conditional appointment and emergency conditional appointment for prospective employees of nonpublic or private elementary or secondary schools that elect to fingerprint and seek clearance from the Department for prospective employees beginning July 1, 2007.

Subdivision (e) of Section 87.2 is amended to include in the definition of a covered school any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance for prospective employees from the Department beginning July 1, 2007. It also clarifies that covered schools must be geographically located in New York State.

Subdivision (i) of Section 87.2 amends the definition of designated fingerprinting entity to include a nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance from the Department for prospective employees beginning July 1, 2007.

Section 87.4 is amended to clarify that the requirements in Part 87 apply to prospective employees appointed to compensated positions in a nonpublic or private elementary or secondary school on or after July 1, 2007 if such school elects to fingerprint and seek clearance from the Department for prospective employees and does not apply to employees of such schools appointed prior to July 1, 2007. The proposed amendment further clarifies that prospective employees of nonpublic or private elementary or secondary schools who commence providing services on or after July 1, 2007 will be subject to the requirements of this section when such prospective school employees are: employees of a provider of contracted services to the covered school, or workers who are placed within the covered school under a public assistance employment program pursuant to title 9-B of article V of the Social Services Law, directly or through contract, or in compensated positions at the covered school not appointed by official action of the governing body of such covered school.

Subdivisions (a) and (b) of Section 87.4 are amended to clarify that all prospective school employees who are not in the SED criminal history file shall be fingerprinted. These amendments further clarify that school employees shall request that the designated fingerprinting entity transmit a sufficient number of fingerprints to the Department. Previously, this section required two sets of completed fingerprint cards, but the Department may need more or less than two sets to perform their criminal history record check.

Paragraph (5) of subdivision (a) and paragraph (3) of subdivision (b) of Section 87.4 are deleted to conform with current practice and procedures.

Section 87.5 is amended to permit the Department to consider not only the criminal history record, but any related information obtained by the Department pursuant to the review of such record when the criminal history record check reveals that the prospective school employee was convicted of a crime or has a pending criminal charge.

Sections 87.5 and 87.6 are also amended to reflect the new title of the executive director of the Office of Teaching Initiatives to the Assistant Commissioner of the Office of Teaching Initiatives.

Section 87.8 is amended to provide that the fee for a criminal history record search may also be paid by credit card. This amendment also changes the term school district in this section to covered school to conform with the terms of the regulation.

Section 87.10 is added to provide special requirements for nonpublic or private elementary or secondary schools that elect to fingerprint and seek clearance for prospective employees beginning July 1, 2007. Specifically, this section requires that any nonpublic or private elementary or secondary school that elects to submit to the Department requests for criminal history record review of prospective employees to notify the Assistant Commissioner of the Office of Teaching Initiatives, or his designee, of its intent to elect to fingerprint and seek clearance on a form prescribed by the Department through the Department's TEACH online services system. It further requires that any nonpublic or private elementary or secondary school that elects to submit requests for review to do so for each prospective employee and to develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency conditional appointment.

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-20-07-00013-P, Issue of May 16, 2007. The emergency rule will expire August 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 laws and policies of the State relating to education.

Paragraph (a) of subdivision (30) of section 305 of the Education Law authorizes the Commissioner of Education to promulgate regulations to authorize the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") based on the use of such fingerprints. This paragraph also requires the Commissioner, in cooperation with DCJS to promulgate a form to be provided to nonpublic or private elementary or secondary schools in connection with the submission of fingerprints and a form for the recordation of allegations of child abuse in an educational setting.

Paragraph (b) of subdivision (30) of Section 305 of the Education Law requires the Commissioner of Education, in cooperation with DCJS to promulgate a form to be provided to all prospective employees of nonpublic and private elementary and secondary schools that elect to fingerprint and seek clearance for prospective employees to inform the prospective employee that the Commissioner is authorized to request his or her criminal history information and that the employee has the right to obtain, review and seek correction of such information.

Paragraph (c) of subdivision (30) of Section 305 of the Education Law requires the prospective employer to obtain the signed, informed consent of the prospective employee on a form supplied by the Commissioner of Education.

Paragraph (d) of subdivision (30) of Section 305 of the Education Law requires the Commissioner to develop forms to be provided to all nonpublic or private elementary and secondary schools that elect to fingerprint their prospective employees, to be completed and signed by prospective employees when conditional appointment or emergency conditional appointment is offered.

Subdivision (2) of section 3001-d of the Education Law authorizes nonpublic or private elementary or secondary schools to apply to the Commissioner for criminal history record checks on prospective employees.

Paragraph (a) of subdivision (3) of section 3001-d authorizes a nonpublic or private elementary or secondary school to conditionally appoint a prospective employee. A request for conditional clearance may be forwarded to the Commissioner with the prospective employee's fingerprints.

Paragraph (b) of subdivision (3) of section 3001-d authorizes a nonpublic or private elementary or secondary school to make an emergency conditional appointment when an unforeseen emergency vacancy has occurred.

Paragraph (c) of subdivision (3) of section 3001-d requires each nonpublic or private elementary or secondary school, which elects to fingerprint prospective employees, to develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency conditional appointment.

Subdivision (4) of section 3001-d authorizes the Commissioner to charge additional fees to applicants for certificates in an amount equal to the fees established pursuant to law by the division of criminal justice services and the federal bureau of investigation for the searches authorized by this section.

Subdivision (1) of section 3035 of the Education Law authorizes the Commissioner of Education to submit to DCJS two sets of fingerprints for prospective school employees along with processing fees, for the purpose of obtaining criminal history records from DCJS and the FBI.

Paragraph (a) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the nonpublic or private elementary or secondary school when the prospective school employee is cleared for employment based on his or criminal history and provides a prospective school employee who is denied clearance the right to be heard and offer proof in opposition to such determination in accordance with the Regulations of the Commissioner of Education.

Paragraph (b) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the prospective employee and the appropriate nonpublic or private elementary or secondary school when a prospective employee is conditionally cleared for employment based upon his or her criminal history or that more time is needed to make the determination.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by establishing requirements and procedures necessary to implement the statutory requirements prescribed in Chapter 630 of the Laws of 2006. That statute authorizes nonpublic and private schools to require their prospective school employees to be fingerprinted, to undergo a criminal history check, and be cleared for employment by the State Education Department.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to set forth requirements and procedures for the fingerprinting and the criminal history record check of prospective nonpublic and private school employees in order to implement the requirements set forth in sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006. Specifically, the proposed amendment makes the following major changes:

In order to conform the regulations to the requirements set forth in Sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006, the proposed amendment revises the definitions in Part 87 for clearance for employment, conditional appointment, conditional clearance for employment and covered school to permit nonpublic and private schools to seek such clearances and appointments from the Department beginning July 1, 2007. The proposed amendment also authorizes nonpublic or private elementary or secondary schools to be a designated fingerprinting entity if they choose to fingerprint prospective school employees.

The proposed amendment further clarifies that the fingerprinting and criminal history record check requirements under Part 87 apply to all prospective school employees appointed to compensated positions in a nonpublic or private elementary school that elects to fingerprint and seek clearance from the Department for prospective employees on or after July 1, 2007 and not to prospective employees appointed to such schools prior to July 1, 2007.

The amendment authorizes the Department to consider the criminal history record and any related information obtained by the Department pursuant to such review, when the criminal history record check reveals that the prospective school employee was convicted of a crime or has a pending criminal charge.

The proposed amendment also makes technical changes to the due process requirements of Part 87 to reflect the change in title of the executive director of the Office of Teaching Initiatives to the Assistant Commissioner of the Office of Teaching Initiatives. The amendment also clarifies that the Department will accept a credit card for the fee charged for a criminal history information request under Part 87 to conform with current practice.

In order to implement the requirements of Chapter 630 of the Laws of 2006, the proposed amendment also requires that beginning July 1, 2007, any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance from the Department for prospective employees must notify the Assistant Commissioner of the Office of Teaching Initiatives, or his designee, on forms provided by the Department of its intent to seek clearance from the Department through the Department's TEACH online services system.

The amendment further clarifies that any nonpublic or private elementary or secondary school that elects to submit requests for criminal history record review to the Department for prospective employees shall do so with respect to each such prospective employee and shall develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency appointment.

4. COSTS:

(a) Costs to State government: The proposed amendment implements specific statutory mandates. Accordingly, the costs of the proposed amendment are directly attributable to the statutory requirements. The State Education Department has requested an appropriation of \$380,000 to administer the new statutory requirements.

(b) Costs to local government: The proposed amendment implements specific statutory directives, applicable to nonpublic and private schools. All of the additional requirements in the proposed amendment are imposed by Chapter 630 of the Laws of 2006. Accordingly, the proposed amend-

ment will not result in additional costs upon local government beyond those imposed by the statute.

(c) Costs to private regulated parties: As stated above, the proposed amendment implements the requirements of Chapter 630 of the Laws of 2006. The costs to private regulated parties are also attributable to the statute.

Chapter 630 of the Laws of 2006 authorizes nonpublic or private elementary and secondary schools to elect to have their prospective employees to be fingerprinted and undergo a criminal history review by the Department. The Department estimates that approximately 10,000 individuals will be fingerprinted each year and undergo a criminal history record check and a review for purposes of clearance for employment. The statute authorizes the Commissioner of Education to collect a fee for the criminal history check in an amount equal to the fees established pursuant to law by the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") for the criminal history search. The proposed amendment mirrors this statutory language. The combined fee for the search by DCJS and the FBI is currently \$99. Under the proposed regulatory framework, an individual who was fingerprinted and is in the Department's criminal history file will not have to pay any fee for additional clearances for employment.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendment will not impose additional costs on the Department beyond those required by Chapter 630 of the Laws of 2006.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose additional requirements beyond those prescribed in the statute.

6. PAPERWORK:

The proposed amendment does not impose additional requirements beyond those prescribed in the statute.

7. DUPLICATION:

The proposed amendment does not duplicate other requirements of State and Federal government.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered. The amendment implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal requirements relating to the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

Consistent with the effective date of the statute, the proposed amendment applies to employees appointed by official action of the governing body of any nonpublic or private elementary or secondary school after July 1, 2007 if such school has provided written notice to the Department that it elects to have their prospective employees fingerprinted and undergo a criminal history record review by the Department.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment to the Regulations of the Commissioner of Education applies to each of the approximately 2,100 nonpublic and private schools located in New York State that apply to the Commissioner of Education for criminal history record checks on prospective employees. The Department estimates that of these 2,100 nonpublic and private schools, approximately 110 of these are for-profit businesses with less than 100 employees.

2. COMPLIANCE REQUIREMENTS:

Chapter 630 of the Laws of 2006 amends sections 305 and 3035 and adds a new section 3001-d to the Education Law to authorize nonpublic and private elementary or secondary schools to require their prospective employees to be fingerprinted and undergo a criminal history record check by the Department. The purpose of the proposed amendment is to implement these requirements. It does not impose additional requirements beyond those prescribed in Chapter 630 of the Laws of 2006.

In order to conform the regulations to the requirements set forth in Sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006, the proposed amendment revises the definitions in Part 87 for clearance for employment, conditional appointment, conditional clearance for employment and covered school to permit nonpublic and private schools to seek such clearances and appointments from the Department beginning July 1, 2007. The proposed amendment also authorizes nonpublic or private elementary or secondary schools to become a designated fingerprinting entity if they choose to fingerprint prospective school employees.

The proposed amendment further clarifies that the fingerprinting and criminal history record check requirements under Part 87 apply to all prospective school employees appointed to compensated positions in a nonpublic or private elementary school that elects to fingerprint and seek clearance from the Department for prospective employees on or after July 1, 2007 and not to prospective employees appointed to such schools prior to July 1, 2007.

The amendment authorizes the Department to consider the criminal history record and any related information obtained by the Department pursuant to such review, when the criminal history record check reveals that the prospective school employee was convicted of a crime or has a pending criminal charge.

The proposed amendment also makes technical changes to the due process requirements of Part 87 to reflect the change in title of the executive director of the Office of Teaching Initiatives to the Assistant Commissioner of the Office of Teaching Initiatives. The amendment also clarifies that the Department will accept a credit card for the fee charged for a criminal history information request under Part 87 to conform with current practice.

In order to implement the requirements of Chapter 630 of the Laws of 2006, the proposed amendment further requires that beginning July 1, 2007, any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance from the Department for prospective employees must notify the Assistant Commissioner of the Office of Teaching Initiatives, or his designee, on forms provided by the Department of its intent to seek clearance from the Department through the Department's TEACH online services system.

The amendment further clarifies that any nonpublic or private elementary or secondary school that elects to submit requests for criminal history record review to the Department for prospective employees shall do so with respect to each such prospective employee and shall develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency appointment.

3. PROFESSIONAL SERVICES:

The proposed amendment would not require a nonpublic or private school to hire additional professional services. However, if a nonpublic or private school chooses to become a designated fingerprinting entity so that it can fingerprint prospective employees, such schools may have to hire staff to do this function or may train existing staff to do the fingerprinting.

4. COMPLIANCE COSTS:

The proposed amendment implements specific statutory directives, applicable to nonpublic or private elementary or secondary schools that elect to fingerprint and seek clearance from the Department for their prospective employees. The requirements set forth in the proposed amendment are imposed by Chapter 630 of the Laws of 2006. Chapter 630 of the Laws of 2006 authorizes nonpublic or private elementary and secondary schools to elect to have their prospective employees to be fingerprinted and undergo a criminal history review by the Department. The Department estimates that approximately 10,000 individuals will be fingerprinted each year and undergo a criminal history record check and a review for purposes of clearance for employment. The statute authorizes the Commissioner of Education to collect a fee for the criminal history check in an amount equal to the fees established pursuant to law by the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") for the criminal history search. The proposed amendment mirrors this statutory language. The combined fee for the search by DCJS and the FBI is currently \$99. Under the proposed regulatory framework, an individual who was fingerprinted and is in the Department's criminal history file will not have to pay any fee for additional clearances for employment.

Accordingly, the proposed amendment will not result in additional costs beyond those imposed by the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any new technological requirements on nonpublic or private schools. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements the requirements of Chapter 630 of the Laws of 2006. The intent of the statute is to help ensure the safety of school children by requiring prospective nonpublic and private school employees to be subject to a criminal history record check. Because of the nature of the proposed amendment, imposing different standards for nonpublic and private elementary and secondary schools that are small businesses would be inappropriate.

7. SMALL BUSINESS PARTICIPATION:

Comments on the proposed regulation were solicited from nonpublic and private elementary or secondary schools across the State, including those that are considered small businesses.

(b) Local Governments:

The purpose of the proposed amendment is to set forth the requirements and procedures for the fingerprinting and the criminal history record check of prospective nonpublic and private school employees in order to implement the requirements set forth in sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006. The proposed amendment will not impose an adverse economic impact or reporting, recordkeeping, or other compliance requirements on local governments. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all nonpublic and private schools in the State and their prospective employees, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The Department estimates that there are approximately 2,100 nonpublic and private elementary or secondary schools located in such counties.

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

The proposed amendment does not impose additional requirements beyond those prescribed in Chapter 630 of the Laws of 2006. As required by Chapter 630, the proposed amendment authorizes a nonpublic or private elementary or secondary school to require prospective school employees to be fingerprinted and cleared for employment by the Department, in the same manner as previously prescribed for employees of public schools, charter schools and boards of educational cooperative services pursuant to Chapter 180 of the Laws of 2000, as previously implemented in Part 87 of the Regulations of the Commissioner of Education.

In order to conform with the new requirements set forth in sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006, the proposed amendment revises the definitions in Part 87 for clearance for employment, conditional appointment, conditional clearance for employment and covered school to permit nonpublic and private schools to seek such clearances and appointments from the Department beginning July 1, 2007. The proposed amendment also authorizes nonpublic or private elementary or secondary schools to become a designated fingerprinting entity if they choose to fingerprint prospective school employees.

The proposed amendment further clarifies that the fingerprinting and criminal history record check requirements under Part 87 apply to all prospective school employees appointed to compensated positions in a nonpublic or private elementary school that elects to fingerprint and seek clearance from the Department for prospective employees on or after July 1, 2007 and not to prospective employees appointed to such schools prior to July 1, 2007.

The amendment also authorizes the Department to consider the criminal history record and any related information obtained by the Department pursuant to such review, when the criminal history record check reveals that the prospective school employee was convicted of a crime or has a pending criminal charge.

The proposed amendment also provides technical changes to the due process requirements of Part 87 to reflect the change in title of the executive director of the Office of Teaching Initiatives to the Assistant Commissioner of the Office of Teaching Initiatives. In addition, in order to conform with current practice, the amendment also clarifies that the Department will accept a credit card for the fee charged for a criminal history information request under Part 87.

In order to implement the requirements of Chapter 630 of the Laws of 2006, the proposed amendment also requires that beginning July 1, 2007, any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance from the Department for prospective employees shall notify the Assistant Commissioner of the Office of Teaching Initiatives, or his designee, on forms provided by the Department of its intent to seek clearance from the Department through the Department's TEACH online services system.

The proposed amendment further clarifies that any nonpublic or private elementary or secondary school that elects to submit requests for criminal

history record review to the Department for prospective employees shall do so with respect to each such prospective employee and shall develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency appointment.

3. COSTS:

The proposed amendment implements specific statutory requirements for nonpublic and private schools and their prospective employees. All of the additional requirements are imposed by Chapter 630 of the Laws of 2006. Accordingly, the proposed amendment will not result in additional costs on these entities beyond those imposed by the statute. The Department estimates that about 10,000 individuals each year will be fingerprinted and undergo the criminal history record check. The statute authorizes the Commissioner of Education to collect a fee for the criminal history check in an amount equal to the fees established pursuant to law by the Division of Criminal Justice Services and the FBI for the criminal history search. The combined fee for the search by DCJS and the FBI is currently \$99. Under the proposed regulatory framework, an individual who was fingerprinted and is in the Department's criminal history file will not have to pay a fee for additional clearances for employment and/or certification.

The proposed amendment would not require a nonpublic or private school to hire additional professional services. However, if a nonpublic or private school chooses to become a designated fingerprinting entity so that it can fingerprint prospective employees, such schools may have to hire staff to do this function or may train existing staff to do the fingerprinting.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements the requirements of Chapter 630 of the Laws of 2006. The statute makes no exception and does not impose different requirements for nonpublic and private schools located in rural areas, or for prospective school employees who live or work in rural areas. The proposed amendment has been carefully drafted to implement the statutory mandates. The intent of the statute is to help ensure the safety of school children by requiring prospective nonpublic and private school employees to be subject to a criminal history record check. Because of the nature of the proposed amendment, imposing different standards for rural entities would be inappropriate.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to set forth requirements and procedures for the fingerprinting and the criminal history record check of prospective nonpublic and private school employees in order to implement the requirements set forth in sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006. Because the proposed amendment simply implements the statutory requirements, it will not have any impact on jobs and employment opportunities beyond the impact of the statute.

In any event, the requirements set forth in Chapter 630 of the Laws of 2006 will not have a substantial adverse impact on jobs and employment opportunities. First, the requirements of Chapter 630 do not affect the number of jobs or the number of employment opportunities. The statutory requirements will only impact whether a particular individual is qualified to obtain a position in a nonpublic or private elementary or secondary school. Secondly, the statutory requirements are not expected to cause a significant number of individuals to be found not qualified for school positions. According to the Division of Criminal Justice Services, only three to four percent of the general population has a criminal record. Of these, the Department estimates that only a small percentage, less than 25 percent, will have a sufficient criminal history that to warrant a denial of clearance for employment based on the standards set forth in Correction Law Section 752 and the factors specified in Correction Law Section 753. Also, the requirements of the statute only apply to nonpublic or private elementary or secondary schools that elect to have the Commissioner review their prospective employee's criminal history record.

Because it is evident from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

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

Loan of Instructional Computer Hardware

I.D. No. EDU-24-07-00025-EP

Filing No. 544

Filing date: May 29, 2007

Effective date: May 29, 2007

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

Action taken: Amendment of sections 21.3 and 100.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 753(1) and 754(1) and sections 7-a and 7-b of 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 Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, to provide for the loan of instructional computer hardware from public school districts to nonpublic school students.

Education Law section 754 requires school districts to loan instructional computer hardware to pupils attending nonpublic elementary and secondary schools. Education Law section 753 requires school districts to demonstrate in a plan, to the satisfaction of the Commissioner of Education, that the instructional computer hardware needs of public and nonpublic students have been adequately met. The statute requires the Commissioner to establish by regulation procedures for the loan of instructional computer hardware and the process for meeting the planning requirement.

State Administrative Procedure Act (SAPA) section 202 generally provides that a rule may not be adopted until at least 45-days after publication of a Notice of Proposed Rule Making in the *State Register*. Because the Board of Regents meets at fixed intervals, the earliest the proposed rule could be presented for adoption by the Board of Regents, after expiration of the 45-day public comment period prescribed by SAPA, is the September 10-11, 2007 Regents meeting. However, affected school districts need to know now the loan procedures and planning requirements and to implement Education Law sections 753 and 754, so that they may timely receive information from nonpublic schools on behalf of their students pursuant to statutory requirements.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to immediately establish loan and plan procedures under Education Law sections 753 and 754, so that school districts may timely notify nonpublic schools for implementation of statutory requirements in the 2007-2008 school year.

It is anticipated that the proposed rule will be presented for adoption as a second emergency action at the July 25-27 meeting of the Board of Regents and as a permanent rule at the September 10-11 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: Loan of instructional computer hardware.

Purpose: To implement Education Law sections 753 and 754, as added by chapter 57 of the Laws of 2007, to provide for the loan of instructional computer hardware from public school districts to nonpublic school students.

Text of emergency/proposed rule: 1. Section 21.3 of the Rules of the Board of Regents is amended, effective May 29, 2007, as follows:

§ 21.3 Lending procedures for computer software *and instructional computer hardware*.

(a) *Lending procedures for computer software.*

(1) Computer software programs means prepared educational programs which are subject-oriented for use by students in conjunction with computers. The following items shall not be considered to constitute computer software programs for the purpose of this section: microcomputers, blank diskettes, cassettes or tapes, chips, computer correction devices, consoles, cords, disk drives and other similar items of hardware.

[(b)] (2) Pupils enrolled in grades kindergarten through 12 in schools in New York State may borrow computer software programs designated for use in any public elementary or secondary school in the State of New York or approved by any school board. Such computer software programs shall be required for use as a learning aid in a particular class or program.

Computer software programs which are religious in nature or content shall not be purchased or loaned by a school district.

[(c)] (3) Computer software programs shall be loaned upon the individual written request of nonpublic school students, but such requests shall not be required of public school students. Such requests may be presented directly to the lending district or, with the consent of such district, to an appropriate official of the nonpublic school which the student attends. The form of request used by a lending district may provide for a guarantee by a parent or guardian for the return of such software or, in the case of loss or damage, for payment of the value thereof.

[(d)] (4) Computer software programs owned or acquired by a school district pursuant to section 752 of the Education Law shall be available on an equitable basis to all eligible pupils enrolled in grades kindergarten through 12 in public and nonpublic schools within the district, and to pupils with handicapping conditions residing in such district who attend programs under the provisions of paragraphs c, e, g, i and l of subdivision 2 of section 4401 of the Education Law, shall remain the property of the lending district and shall bear an identifying label. The school authorities of each district shall establish lending procedures which apply to pupils in public and nonpublic schools, and shall inform the authorities of such schools of these procedures.

[(e)] (5) All computer software programs shall be returned to the official designated by the lending district as the custodian thereof upon the request of such official. A lending district may agree that such software may be stored upon the property of a nonpublic school, in which event the lending district shall furnish the nonpublic school with an inventory of the software loaned to the individual students attending such school and the nonpublic school authorities shall advise the lending district of any software which has not been returned, with the name and last known address of the borrower.

[(f)] (6) Computer software programs shall be loaned free to all eligible pupils. No charges, except as provided for in [subdivision (c)] *paragraph (3)* of this [section] *subdivision*, may be levied against individual pupils, parents or schools for the cost of computer software programs or for expenditures related to freight, postage, distribution, storage, recordkeeping or administration.

[(g)] (7) Each district may include in its report of expenditures the purchase price of the computer software programs purchased, including the cost of freight or postage for transporting such software from the vendor to the district. Expenditures relating to distribution, storage, recordkeeping or administration may not be included for computer software aid purposes [, but they may be included for regular operating aid purposes].

[(h)] (8) Public school districts shall maintain a separate record of expenditures incurred from State aid received pursuant to Education Law[,] section 751, and this section.

(b) *Lending procedures for instructional computer hardware.*

(1) *Definitions.*

(i) *Instructional computer hardware shall mean those items of equipment eligible for State aid pursuant to subdivision (b) of section 175.25 of this Title, including:*

(a) *mini-computers;*

(b) *microcomputers;*

(c) *peripheral devices, including printers, video display plotters, and desk storage units;*

(d) *telecommunications hardware, including modems;*

(e) *special hardware boards;*

(f) *cables;*

(g) *audio, video, touch-sensitive and other electronic to human machine interface hardware; and*

(h) *other such computer hardware that may be required for the operation of a computer-based instructional program.*

(ii) *School authorities shall mean those persons as defined under subdivision (p) of section 1.1 of this Title.*

(2) *Pupils enrolled in grades kindergarten through 12 in nonpublic schools in New York State may borrow instructional computer hardware designated for use in any public elementary or secondary school in the State of New York or approved by any school board. Such instructional computer hardware shall be required for use as a learning aid in a particular class or program. Instructional computer hardware containing computer software programs which are religious in nature or content shall not be purchased or loaned by a school district.*

(3) *Instructional computer hardware shall be loaned upon the individual written request of nonpublic school students, but such requests shall not be required of students attending public school districts. Such requests may be presented directly to the lending district or, with the consent of*

such district, to an appropriate official of the nonpublic school which the student attends. The form of request used by a lending district may provide for a guarantee by a parent or guardian for the return of such hardware or, in the case of loss or damage, for payment of the value thereof. School authorities shall adopt regulations specifying the date by which such requests must be received, but no earlier than June 1 of each year prior to the year for which such hardware is being requested. A parent or guardian of a child not attending a particular non-public school prior to June 1 of the school year may request a loan of instructional computer hardware within 30 days after enrollment.

(4) No school district shall be required to loan instructional computer hardware in excess of the instructional computer hardware acquired by such district pursuant to Education Law section 753. Within the limits apportioned to such district pursuant to Education Law section 753, instructional computer hardware acquired pursuant to such section shall be loaned on an equitable basis to children attending nonpublic schools in the district in the current year, and to pupils with handicapping conditions residing in such district who attend programs under the provisions of paragraphs c, e, g, i and l of subdivision 2 of section 4401 of the Education Law, provided that nothing in this section shall be construed to require a school district to loan to children attending nonpublic schools in the district or to such pupils with handicapping conditions, instructional computer hardware purchased with local or federal funds or with State funds other than funds apportioned pursuant to Education Law section 753. Such instructional computer hardware shall remain the property of the lending district and shall bear an identifying label. The school authorities of each district shall establish lending procedures which apply to pupils in public and nonpublic schools, and shall inform the authorities of such schools of these procedures. The payment of tuition under Article 89 of the Education Law is deemed to be an equitable loan to children for whom such tuition is paid, and the provisions of this section shall not apply.

(5) All instructional computer hardware shall be returned to the official designated by the lending district as the custodian thereof upon the request of such official. A lending district may agree that such hardware may be stored upon the property of a nonpublic school, in which event the lending district shall furnish the nonpublic school with an inventory of the hardware loaned to the individual students attending such school and the nonpublic school authorities shall advise the lending district of any hardware which has not been returned, with the name and last known address of the borrower.

(6) Instructional computer hardware shall be loaned free to all eligible pupils. No charges, except as provided for in paragraph (3) of this subdivision, may be levied against individual pupils, parents or schools for the cost of instructional computer hardware or for expenditures related to freight, postage, distribution, storage, recordkeeping or administration.

(7) Each district may include in its report of expenditures the purchase price of the instructional computer hardware purchased, including the cost of freight or postage for transporting such hardware from the vendor to the district. Expenditures relating to distribution, storage, recordkeeping or administration may not be included for instructional computer hardware aid purposes.

(8) Public school districts shall maintain a separate record of expenditures incurred from State aid received pursuant to Education Law section 753 of the Education Law, and this section.

2. Section 100.12 of the Regulations of the Board of Regents is amended, effective May 29, 2007, as follows:

§ 100.12 Instructional computer technology plans.

(a) To be eligible for aid for instructional computer [technology expenses pursuant to Education Law, section 3602(26-a)] hardware and technology equipment expenses pursuant to Education Law section 753, school district shall develop and maintain a plan, in a format prescribed by the commissioner, for the use of the instructional computer technology equipment.

(b) Each plan shall include:

(1) a description of the number and type of instructional computer technologies to be used and how they will be applied to the overall K-12 instructional program;

(2) provision for the maintenance and repair of equipment, consistent with the five-year capital assets preservation plan as provided for in Education Law[,] section 3602(6) and section 155.1(a)(4) of this Title; [and]

(3) provision for staff development to demonstrate how classroom teachers will use instructional computer technology across the K-12 curriculum ; and

(4) an assurance of the superintendent of schools, in a form prescribed by the commissioner, that the school district has provided for the loan of instructional computer hardware to students legally attending nonpublic schools pursuant to Education Law section 754.

(c) Plans may provide for the school district's participation in any Federal-and State-funded instructional technology initiatives, including but not limited to the universal service discount program pursuant to the Federal Telecommunications Act of 1996 and the Federal Technology Literacy Challenge Program.

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 August 26, 2007.

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, State 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: 45 days after publication of this notice.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 215 provides the Commissioner with the authority to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

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

Education Law section 753, as added by Chapter 57 of the Laws of 2007, provides for an apportionment for approved school district expenses for computer hardware or technology equipment, or for repair of such equipment or staff development for instructional purposes. Such aid shall be provided pursuant to a plan developed by the district that demonstrates, to the satisfaction of the Commissioner, that the instructional computer hardware needs of the district's public and nonpublic school students have been adequately met.

Education Law section 754, as added by Chapter 57 of the Laws of 2007, requires school authorities to loan instructional computer hardware to an individual or a group of individuals legally attending nonpublic schools located in the district, subject to such rules and regulations as prescribed by the Board of Regents.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and it is necessary to implement Education Law section 753 and 754, as added by Chapter 57 of the Laws of 2007, by establishing criteria to provide for the loan of instructional computer hardware from public school districts to nonpublic school students.

NEEDS AND BENEFITS:

The proposed rule is needed to implement the statutory requirements.

Education Law section 754, as added by Chapter 57 of the Laws of 2007, requires school authorities to loan instructional computer hardware to an individual or a group of individuals legally attending nonpublic schools located in the district, subject to such rules and regulations as prescribed by the Board of Regents. These requirements are detailed in an amendment to section 21.3 of the Rules of the Board of Regents, which detail loan procedures for computer hardware and software.

Education Law section 753, as added by Chapter 57 of the Laws of 2007, provides for an apportionment for approved school district expenses

for computer hardware or technology equipment, or for repair of such equipment or staff development for instructional purposes. Such aid shall be provided pursuant to a plan developed by the district that demonstrates, to the satisfaction of the Commissioner, that the instructional computer hardware needs of the district's public and nonpublic school students have been adequately met. Section 100.12, as amended, specifies that each school district's technology plan including an assurance that the school district has provided for the loan of instructional computer hardware to students legally attending nonpublic schools pursuant to Education Law section 754.

The rule establishes systems and processes that will provide needed computer hardware to benefit students attending nonpublic schools in the state, which is a necessary component in raising academic achievement through additional computer training, education and instructional delivery.

COSTS:

The rule is necessary to implement Chapter 57 of the Laws of 2007 and does not impose any additional costs beyond those inherent in the statute.

a. Costs to State government: None.

b. Costs to local governments: None. As no school district will be required to loan instructional computer hardware in excess of that provided under the state aid formula for the district under Education Law section 753, there will be no additional costs.

c. Costs to private, regulated parties: None. There are no anticipated additional costs to private, regulated parties.

d. Costs to the Education Department of implementation and continuing compliance: None. There are no anticipated additional costs to the State Education Department.

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement Education Law section 753 and 754, as added by Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on local governments beyond that imposed by the statute. Consistent with Chapter 57 of the Laws of 2007, the proposed rule requires that each district adopt regulations, procedures and deadlines for applying on behalf of nonpublic students for a loan of instructional computer technology equipment from the public school district. They are also required to maintain a record of expenditures incurred from State aid received for such hardware and equipment under Education Law section 753.

PAPERWORK:

Instructional computer hardware shall be loaned upon the individual written request of nonpublic school students, but such requests shall not be required of students attending public school districts. Such requests may be presented directly to the lending district or, with the consent of such district, to an appropriate official of the nonpublic school which the student attends. The form of request used by a lending district may provide for a guarantee by a parent or guardian for the return of such hardware or, in the case of loss or damage, for payment of the value thereof. School authorities shall adopt regulations specifying the date by which such requests must be received, but no earlier than June 1 of each year prior to the year for which such hardware is being requested. A parent or guardian of a child not attending a particular non-public school prior to June 1 of the school year may request a loan of instructional computer hardware within 30 days after enrollment.

Each district may include in its report of expenditures the purchase price of the instructional computer hardware purchased, including the cost of freight or postage for transporting such hardware from the vendor to the district. Expenditures relating to distribution, storage, recordkeeping or administration may not be included for instructional computer hardware aid purposes.

Public school districts shall maintain a separate record of expenditures incurred from State aid received pursuant to Education Law section 753, and section 21.3.

DUPLICATION:

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007. There are no areas of duplication or conflict with the requirements of State or federal governments.

ALTERNATIVES:

The proposed amendment is necessary to implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007. There were no significant alternatives to the proposed rule and none were considered.

FEDERAL STANDARDS:

There are no substantive federal standards that are applicable to this proposal insofar as the proposed rule relates to a State aid allocation for

computer hardware or technology equipment, for repair of such equipment, and for staff development for instructional purposes.

COMPLIANCE SCHEDULE:

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007. It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment is necessary to implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, to provide for the loan of instructional computer hardware from public school districts to nonpublic school students and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that small businesses will not be affected, no further measures are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and has not been prepared.

Local government:

EFFECT OF RULE:

The proposed amendment applies to each public school district in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement Education Law section 753 and 754, as added by Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on local governments beyond that imposed by the statute. Consistent with Chapter 57 of the Laws of 2007, the proposed rule requires that each district adopt regulations, procedures and deadlines for applying on behalf of nonpublic students for a loan of instructional computer technology equipment from the public school district. They are also required to maintain a record of expenditures incurred from State aid received for such hardware and equipment under Education Law section 753.

Instructional computer hardware shall be loaned upon the individual written request of nonpublic school students, but such requests shall not be required of students attending public school districts. Such requests may be presented directly to the lending district or, with the consent of such district, to an appropriate official of the nonpublic school which the student attends. The form of request used by a lending district may provide for a guarantee by a parent or guardian for the return of such hardware or, in the case of loss or damage, for payment of the value thereof. School authorities shall adopt regulations specifying the date by which such requests must be received, but no earlier than June 1 of each year prior to the year for which such hardware is being requested. A parent or guardian of a child not attending a particular non-public school prior to June 1 of the school year may request a loan of instructional computer hardware within 30 days after enrollment.

Each district may include in its report of expenditures the purchase price of the instructional computer hardware purchased, including the cost of freight or postage for transporting such hardware from the vendor to the district. Expenditures relating to distribution, storage, recordkeeping or administration may not be included for instructional computer hardware aid purposes.

Public school districts shall maintain a separate record of expenditures incurred from State aid received pursuant to Education Law section 753, and section 21.3.

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

PROFESSIONAL SERVICES:

None.

COMPLIANCE COSTS:

The proposed amendment is necessary to implement Education Law section 753 and 754, as added by Chapter 57 of the Laws of 2007, and does not impose any significant, additional costs beyond those inherent in the statute. As no school district will be required to loan instructional computer hardware in excess of that provided under State aid formula for the district under Education Law section 753, there will be no additional costs. There are no anticipated additional costs to private, regulated parties.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Economic feasibility is addressed under the Compliance costs section above. The proposed amendment is necessary to implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, and does not impose any additional technological requirements on school districts beyond those inherent in the statute. Education Law section 754, as added by Chapter 57 of the Laws of 2007, requires school authorities to

loan instructional computer hardware to an individual or a group of individuals legally attending nonpublic schools located in the district, subject to such rules and regulations as prescribed by the Board of Regents. These requirements are detailed in an amendment to section 21.3 of the Rules of the Board of Regents, which detail loan procedures for computer hardware and software.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Chapter 57 of the Laws of 2007 and is applicable to all school districts throughout the State. Consequently, the substantive provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt school districts from coverage by the proposed amendment.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. Guidance information will be provided to school districts and their component schools within the existing State Aid Management System (SAMS) which school districts use to file numerous reports with the department relating to various aids and expenditures.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

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

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

The proposed amendment is necessary to implement Education Law section 753 and 754, as added by Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on local governments beyond that imposed by the statute. Consistent with Chapter 57 of the Laws of 2007, the proposed rule requires that each district adopt regulations, procedures and deadlines for applying on behalf of nonpublic students for a loan of instructional computer technology equipment from the public school district. They are also required to maintain a record of expenditures incurred from State aid received for such hardware and equipment under Education Law section 753.

Instructional computer hardware shall be loaned upon the individual written request of nonpublic school students, but such requests shall not be required of students attending public school districts. Such requests may be presented directly to the lending district or, with the consent of such district, to an appropriate official of the nonpublic school which the student attends. The form of request used by a lending district may provide for a guarantee by a parent or guardian for the return of such hardware or, in the case of loss or damage, for payment of the value thereof. School authorities shall adopt regulations specifying the date by which such requests must be received, but no earlier than June 1 of each year prior to the year for which such hardware is being requested. A parent or guardian of a child not attending a particular non-public school prior to June 1 of the school year may request a loan of instructional computer hardware within 30 days after enrollment.

Each district may include in its report of expenditures the purchase price of the instructional computer hardware purchased, including the cost of freight or postage for transporting such hardware from the vendor to the district. Expenditures relating to distribution, storage, recordkeeping or administration may not be included for instructional computer hardware aid purposes.

Public school districts shall maintain a separate record of expenditures incurred from State aid received pursuant to Education Law section 753, and section 21.3.

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

COSTS:

The rule is necessary to implement Chapter 57 of the Laws of 2007 and does not impose any additional costs beyond those inherent in the statute. As no school district will be required to loan instructional computer hardware in excess of that provided under State aid formula for the district under Education Law section 753, there will be no additional costs. There are no anticipated additional costs to private, regulated parties.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007 and is applicable to all school districts throughout the State. Consequently, the substantive provisions of the proposed rule are statutorily

imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the rule.

RURAL AREA PARTICIPATION:

The proposed rule will be submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas as well as the Rural Schools Association. In addition, guidance memos will be provided to the field outlining changes in the law and posted on the State Aid Management System (SAMS) website, for reference.

Job Impact Statement

The proposed amendment is necessary to implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, to provide for the loan of instructional computer hardware from public school districts to nonpublic school students. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Universal Prekindergarten Programs

I.D. No. EDU-24-07-00027-EP

Filing No. 548

Filing date: May 29, 2007

Effective date: May 29, 2007

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

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

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

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

Specific reasons underlying the finding of necessity:

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

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

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

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

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

(4) require the Department to prescribe uniform quality standards for universal prekindergarten programs. This section also requires that the regulations of the Commissioner establish minimum curriculum standards to ensure that universal prekindergarten programs include curricula aligned with the State learning standards, that ensures continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve. Further, such regulations must include performance standards for prekindergarten programs, including procedures for assessing the performance of programs and mechanisms for tracking the progress of programs and reporting such

progress to parents and the public. In addition, this section provides the Department with the authority to grant a waiver of any inconsistent provisions of the regulations to allow school districts that operated targeted prekindergarten programs in the 2006-2007 school year to continue to operate under the regulations that applied to the targeted prekindergarten program in that year.

State Administrative Procedure Act (SAPA) section 202 generally provides that a rule may not be adopted until at least 45 days after publication of a Notice of Proposed Rule Making in the State Register. Because the Board of Regents meets at fixed intervals, the earliest the proposed rule could be presented for adoption by the Board of Regents, after expiration of the 45-day public comment period prescribed by SAPA, is the September 10-11, 2007 Regents meeting. However, school districts and eligible agencies need to know now what are the revised standards and requirements for universal prekindergarten programs so that they may timely plan and implement such programs for the 2007-2008 school year pursuant to statutory requirements. It is critical that school districts receive the guidance provided now through the proposed amendments in order to adjust their school budgets as needed, to recruit and enroll children and to timely prepare their universal prekindergarten grant applications for the 2007-08 school year as required by the statute.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to immediately establish uniform quality standards and other requirements for universal prekindergarten programs that are consistent with Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, so that affected school districts may timely plan and implement such programs for the 2007-2008 school year pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 10-11, 2007 meeting of the Board of Regents, which is the first scheduled Regents meeting after expiration of the 45-day public comment period prescribed by the State Administrative Procedure Act.

Subject: Universal prekindergarten programs.

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

Substance of emergency/proposed rule (Full text is posted at the following State website: www.emsc.nysed.gov/nyc/upk.html): The State Education Department proposes to repeal Subpart 151-1 of the Regulations of the Commissioner of Education and promulgate a new Subpart 151-1, effective May 29, 2007. The following is a summary of the provisions of the proposed rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 26, 2007.

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: 45 days after publication of this notice.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

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

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

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

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

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

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

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

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

(6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings; (7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and

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

Section 151-1.4 requires:

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

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

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

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

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

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

COSTS:

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

(a) Costs to State government: None.

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

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

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

LOCAL GOVERNMENT MANDATES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PAPERWORK:

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

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

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

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

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

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

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

(4) a budget of proposed expenditures for services.

DUPLICATION:

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

ALTERNATIVES:

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

garten program requirements to identify areas where greater consistency could be achieved.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely conforms Subpart 151-1 of the Commissioner's Regulations to the provisions of Section 3602-e of Education Law as amended by Chapter 57 of the Laws of 2007, relating to universal prekindergarten programs operated by public school districts, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that small businesses will not be affected, no further measures are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

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

COMPLIANCE REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Each school district planning to receive an allocation to operate a universal prekindergarten program shall submit an application to the Department for approval, in a format and pursuant to a timeline prescribed by

the Commissioner. The application shall include a written request for a variance where applicable.

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

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

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

- (1) a description of the services to be provided;
- (2) a detailed narrative describing how the agency will meet the program's goals and objections;
- (3) a description of the agency's staff qualifications; and
- (4) a budget of proposed expenditures for services.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment is necessary to implement Education Law section 3602-e, as added by Chapter 57 of the Laws of 2007, and does not impose any additional costs beyond those inherent in the statute. The new requirements will result in additional costs to school districts and eligible agencies, as follows:

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

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

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

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

LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

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

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

- (1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;
- (2) provide an early literacy and emergent reading program based on effective, evidence-based instructional practices;
- (3) establish a process for assessing the developmental baseline and on-going assessment of the development of language, cognitive and social skills in children;
- (4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;
- (5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;
- (6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;
- (7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and
- (8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

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

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

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

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

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

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

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

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

- (1) a description of the services to be provided;
- (2) a detailed narrative describing how the agency will meet the program's goals and objections;
- (3) a description of the agency's staff qualifications; and
- (4) a budget of proposed expenditures for services.

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

COMPLIANCE COSTS:

The proposed amendment is necessary to implement Education Law section 3602-e, as added by Chapter 57 of the Laws of 2007, and does not impose any additional costs beyond those inherent in the statute. The new requirements will result in additional costs to school districts and eligible agencies, as follows:

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

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

MINIMIZING ADVERSE IMPACT:

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

RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment is necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, relating to universal prekindergarten programs operated by public school districts, and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Regents Accreditation of Teacher Education Programs

I.D. No. EDU-10-07-00005-A

Filing No. 543

Filing date: May 29, 2007

Effective date: June 14, 2007

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

Action taken: Amendment of section 4-2.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 214 (not subdivided); 215 (not subdivided); and 305(1) and (2)

Subject: Regents accreditation of teacher education programs.

Purpose: To clarify existing procedures for institutions of higher education seeking accreditation of teacher education programs, or renewal of such accreditation, by the Board of Regents.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-10-07-00005-P, Issue of March 7, 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 Coun-

sel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Certified Dental Assistants and Dental Hygienists

I.D. No. EDU-10-07-00006-A

Filing No. 545

Filing date: May 29, 2007

Effective date: June 14, 2007

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

Action taken: Amendment of sections 52.26 and 61.9, repeal section 61.13 and addition of new section 61.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6506(1); 6507(2)(a), 6606(2), 6608 (not subdivided) and 6608-b(4)

Subject: Scope of practice for certified dental assistants and dental hygienists and the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

Purpose: To implement the requirements of section 6608 of the Education Law, as added by chapter 300 of the Laws of 2006, by expanding the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-10-07-00006-P, Issue of March 7, 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 proposed amendment was published in the State Register on March 7, 2007. Below is a summary of written comments received by the State Education Department (SED) and SED's assessment of issues raised.

COMMENT: I strongly feel that this legislation will benefit the dental profession in New York State and at the same time place New York on an equal status with other states that have adopted similar legislation. In my opinion, this legislation will strengthen and support the concept of TEAM dentistry.

RESPONSE: SED agrees. No response to this comment is necessary.

COMMENT: New York has been behind many other states in the responsibilities and duties that can be performed by licensed dental assistants. The new law changes that and the regulations ensure that the licensees will have the proper education, competency and appropriate supervision. This expansion of auxiliaries' duties will enable more efficient delivery of dental services to a greater number of people. Such advances may help slow the increase in costs associated with dental care, as well as provide much needed opportunities to expand access of care in underserved areas of New York State. Every report or conference on improving access to care calls for the expansion of duties for auxiliaries. These regulations are an important step in that direction.

RESPONSE: SED agrees. No response to this comment is necessary.

COMMENT: The Dental Hygienists' Association of the State of New York (DHASNY) supports the proposed amendment to the regulations relating to the practice of certified dental assisting and dental hygiene. The proposed amendment will increase the scope of practice for both certified dental assistants and dental hygienists to include placing, condensing, carving and finishing amalgam and non-metallic restorations under the personal supervision of a licensed dentist. These procedures are in agreement with Chapter 300 of the Laws of New York which states that services performed by certified dental assistants and dental hygienists "shall not include diagnosing and/or performing surgical procedures, irreversible procedures or procedures that would alter the hard or soft tissue of the oral and maxillofacial area."

The educational requirements and the concept of competency in completion of restorative (or any) procedures which certified dental assistants and dental hygienists perform are clearly defined in the regulations.

We are optimistic that the increase in the scope of practice for the professions affected by the proposed regulations will aid in attracting more qualified members to the dental team and begin to address some of the workforce issues that currently exist in the dental profession. These regula-

tions are a step toward improving access to care, and if adopted, will benefit the citizens of New York.

RESPONSE: No response to this comment is necessary.

COMMENT: These regulations implement legislation supporting the expansion of duties for licensed dental assistants and dental hygienists and allows the dentist to more fully utilize the clinical skills of these licensed auxiliaries in providing patient treatment.

The amendment further supports the affirmation of education and examination requirements for licensed dental auxiliaries who provide patient care under the direct supervision by the dentist.

Furthermore, in expanding these regulations, New York joins with other states across the nation in implementing greater utilization of ancillary dental health care providers and in exploring answers to access to care issues.

RESPONSE: No response to this comment is necessary.

COMMENT: The New York Dental Assistants Association supports the mission of the American Dental Assistants Association in advancing the profession of dental assisting by advocating for appropriate academic educational preparation and competency based clinical practice for all dental assisting practitioners.

In keeping with this mission, the NYDAA supports the proposed expansion of functions for the licensed dental assistants and the maintenance of the educational component for practice.

RESPONSE: No response to this comment is necessary.

COMMENT: The New York State Dental Association fully support[s] the regulations and believes the regulation will increase efficiency and access to dental services while maintaining safeguards for proper supervision and competency.

The legislation brings New York in line with other states that allow expanded duties to dental auxiliaries. The regulations make it clear that the dentist remains responsible for evaluating the services and ensuring the competency. Such expansion of duties does not change the dentist responsibility for patient care, but allows him/her to delegate reversible procedures to the skilled auxiliaries.

RESPONSE: No response to this comment is necessary.

COMMENT: At this time, mandatory continuing education is not required for certified dental assistants in New York State. In light of the proposed expanded scope of practice for dental assistants which includes manipulation of current and future materials, techniques, intracanal medications, etc., it would be prudent to require mandatory continuing dental education for these licensed professionals.

RESPONSE: The proposed regulations implement the requirements of Section 6608 of the Education Law, as added by Chapter 300 of the Laws of 2006. Any mandatory requirement for continuing education for certified dental assistants would need to be addressed in statute by the Legislature.

COMMENT: I believe allowing dental assistants and dental hygienists to place, condense and finish non-metallic restorations is contradictory to the intent of the legislation which specifies that they would not be allowed to perform "irreversible procedures". While it is true that the supervising dentist would be the one to remove the non-metallic restoration should it become necessary, even a skilled operator would be very hard-pressed to remove a bonded restoration without removing additional tooth structure. Therefore, this procedure becomes an irreversible procedure unlike the removal of amalgam.

RESPONSE: In the event that removal of material becomes necessary, it is the responsibility of the dentist to remove such material. Neither the dental assistant nor the dental hygienist would perform the procedure resulting in the possible removal of tooth structure. Secondly, the regulation provides supervisory protection requirements for placing, condensing and finishing non-metallic restorations. Specifically, the regulation states that the dentist must personally authorize such procedures and evaluate the service performed by a dental assistant. The proposed regulation provides further protection by reiterating that if a licensee performs a procedure that he/she is not competent to perform or if a licensed dentist delegates a procedure to a certified dental assistant that the licensed dentist knows or has reason to know that the certified dental assistant is not qualified to perform, this is deemed unprofessional conduct.

COMMENT: The Department received nine comments on form letters from dental hygiene student/patients, stating that the proposed amendment is a direct and serious assault on all patients seeking optimum and safe dental care. The myriad of extensive knowledge gained during the dental hygiene educational curriculum fortifies the dental hygienist with foundation knowledge to first and foremost protect the patient by executing care based on competencies gained over years of academic experience.

RESPONSE: This comment does not take into consideration the rigorous educational requirements for licensed certified dental assistants, which includes at least 200 hours and up to 1,000 hours of clinical experience in the practice of certified dental assisting and extensive didactic course work. The regulation also provides protection to patients by reiterating the competency requirements and delegation language contained in Part 29 pertaining to unprofessional conduct.

COMMENT: community college expressed concern that the proposed regulation adds the placing, condensing and carving or finishing of amalgam and non-metallic restorations into registered dental assisting programs. The community college expressed concern: (1) that dental assisting and dental hygiene programs are most frequently located in community colleges and such colleges lack the necessary resources to teach the placing and finishing of permanent restorations to clinical competence; 2) that dental assisting and hygiene curricula are already content-saturated for one and two year programs; 3) that placing and finishing non-metallic restorations, in particular, are technique sensitive; 4) that course content in dental anatomy, occlusion and materials would need to be elevated to the level required in dental school curriculum; and 5) that the regulation does not define limits for permanent restorations although temporary restorations are limited to intra-coronal fillings. The commenter expressed no objection to permitting the restorative services to be performed by licensed individuals who are trained to levels of clinical competence established for dentists performing the same procedures.

The commenter requests that the regulations be amended to grant a certificate to already licensed dental assistants or hygienists to place and finish permanent restorations after completion of appropriate coursework which leads to clinical competence in these skills rather than adding these skills to entry level educational programs.

RESPONSE: With respect to the concern regarding lack of resources, the Department has not received any similar comments/concerns from other dental assisting and dental hygiene programs. Therefore, this may be a localized issue. The Department has also not received other comments/concerns regarding the addition of restorative skills to the dental assisting curriculum. The Department does not anticipate that the addition of such procedures in the curricula for dental assisting to be overly burdensome. Furthermore, due to the expansion of the certified dental assistant's scope of practice, the Department believes it is necessary that programs leading to licensure in certified dental assisting include course work in placing and removing temporary restorations; placing, condensing and carving amalgam restorations; and placing, condensing and finishing non-metallic restorations.

As for the competency issue, competency evolves following completion of a program through additional training in the classroom and performing services under the direct personal supervision of a licensed dentist. It is the responsibility of the dentist and the dental assistant or dental hygienist to know when he or she has reached a level of competence. The proposed amendment specifically provides that if a dental assistant or dental hygienist does not feel that he/she has sufficient competence to perform a certain procedure, he/she should not perform the procedure. The supervising dentist is also responsible for ensuring that he/she only delegates procedures to dental assistants/dental hygienists who have sufficient competency. In addition, as stated in earlier responses, the regulations fortify the requirements regarding competency and delegation.

With respect to the definition of limits on permanent restorations, the Department does not feel that restorations, temporary or permanent, need to be limited to intra-coronal. As stated previously, the decision as to whether a permanent or temporary restoration should be delegated to a dental assistant is at the discretion of the delegating dentist; depending on the competency of such dental assistant or dental hygienist. It should also be noted that the proposed regulation removes the subdivision that defines temporary restorations as being limited to intra-coronal fillings.

In response to the suggestion that the Department issue certificates to licensees based on completion of continuing education course work, the New York State Education Department does not believe that such a requirement is necessary. Practicing beyond one's ability is deemed to be unprofessional conduct under Part 29 of the Rules of the Board of Regents and is a safeguard in place to assure that practitioners are competent when performing such procedures. If a dental assistant or dental hygienist does not feel that they have the requisite competence to perform a procedure, they should complete continuing education course work in that area. It is the responsibility of the both the dental assistant/hygienist and the delegating dentist to ensure that such person is competent to perform any procedures delegated under this proposed amendment. Technology in the dental field is constantly evolving and dental assistants, dental hygienists and

dentists themselves are responsible for gaining the requisite competence prior to performing such procedures.

NOTICE OF ADOPTION

Human Immunodeficiency Virus Tests

I.D. No. EDU-10-07-00007-A

Filing No. 546

Filing date: May 29, 2007

Effective date: June 14, 2007

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

Action taken: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6507(2)(a); 6527(6), 6902(1) and 6909(4)(d) and (5)

Subject: The execution by registered professional nurses of non-patient specific orders to administer human immunodeficiency virus tests.

Purpose: To establish requirements for registered professional nurses to meet when executing non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner for the administration of human immunodeficiency virus tests.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-10-07-00007-P, Issue of March 7, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Operating Standards Aid Plan

I.D. No. EDU-10-07-00008-A

Filing No. 549

Filing date: May 29, 2007

Effective date: June 14, 2007

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

Action taken: Repeal of section 175.43 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), and 3602(12), (12-b) and (38) and L. 2003, ch. 62, part A2, section 15, L. 2004, ch. 57, part C, section 26, L. 2005, ch. 53, L. 2006, ch. 53

Subject: Operating standards aid plan.

Purpose: To eliminate a reporting requirement specifically associated with a category of State aid that is no longer individually calculated and paid to school districts.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-10-07-00008-P Issue of March 7, 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.

on land, contained a typographical error in the Regulatory Impact Statement. The corrected Regulatory Impact Statement is published below in its entirety. (The error was made in the last line of the 4th paragraph in the "Needs and Benefits" section of the Regulatory Impact Statement.)

The Department of Environmental Conservation apologizes for any confusion this may have caused.

Regulatory Impact Statement

1. Statutory Authority

Section 11-0303 Environmental Conservation Law (ECL) addresses the general purposes and policies of the Department of Environmental Conservation (Department) in managing fish and wildlife resources. Sections 11-1101 and 11-1103 of the ECL authorize the Department to regulate the taking, possession and disposition of beaver, fisher, otter, bobcat, coyote, fox, raccoon, opossum, weasel, skunk, muskrat, pine marten and mink ("furbearers"). This proposed regulation addresses restrictions on the use of certain sizes of body gripping traps, traps which are used primarily to take fisher and raccoon.

2. Legislative Objectives

The legislative objective behind the statutory provisions listed above is to authorize the Department to establish the methods by which furbearers may be taken by trapping.

3. Needs and Benefits

The Department proposes to establish a new trapping regulation that is intended to prevent the accidental capture, injury, or killing of dogs in body gripping traps primarily set to catch fisher or raccoons.

The proposed regulation would address the manner in which body gripping traps, measuring five inches or more in the open position, are set on land. Traps are to be measured in accordance with paragraph 11-1101(6)(b) of the Environmental Conservation Law, which reads in part as follows:

The dimension of the body gripping trap shall be ascertained when the trap is set in the extreme cocked position and shall be the maximum distance between pairs of contacting body gripping surfaces except for rectangular devices which shall be the maximum perpendicular distance between pairs of contacting body gripping surfaces.

For traps of this size set on land, the Department is proposing that certain precautions must be taken in order to avoid capturing a dog with the trap. The Department proposes that these traps must be set in compliance with one of three options: (1) set five feet above the ground; or (2) set within a container which has restricted openings and other features designed to prevent a dog from entering and triggering the trap; or (3) set within a container which is fastened to a tree or post in a vertical position, has only one opening which faces the ground, and is set so that the opening is no more than six inches from the ground.

The traps that will be impacted by this rule are mainly used to target raccoons and fisher. Raccoons and fisher are smaller than most dogs and are well adapted for crawling into small holes to find food or shelter or both. These species are natural cavity dwellers. Dogs, on the other hand, are generally not well adapted for climbing into small holes.

The proposed regulations require that the trap be set within a container designed to exclude dogs (unless the trap is set at least 5 feet in the air). In addition, the opening in the container for a trap set on the ground must be no more than six inches high, which is too small for medium to large dogs to enter, and the trap must be set back within the container so that no part of the trap is less than four (4) inches from the opening of the container. A trap that is set affixed to a tree or post, and which is less than five feet from the ground, must have its only opening positioned no more than 6 inches from the ground. This again provides a very small area through which to access the trap within the container. Department staff believe that such requirements will make these traps very selective to catching raccoons and fisher, and inaccessible to dogs. Similar techniques have been used in other states and have proven to be effective.

Traps adapted pursuant to the proposed requirements should remain effective for capturing raccoons and fisher because these species readily enter small holes to seek shelter or food or both. For this reason, the modified trap sets are not expected to significantly reduce the ability of trappers to catch these species. However, the proposed rule will increase the selectivity of trapping and reduce or eliminate the capture of most dogs.

Department of Environmental Conservation

ERRATUM

A Notice of Proposed Rule Making, I.D. No. ENV-22-07-00010-P (published May 30, 2007), pertaining to the setting of body gripping traps

A very small dog, however, may still be vulnerable to capture, injury, or death.

If a trapper opts to comply with the proposed regulation by placing the trap at least five feet above ground, dogs will be at very low risk of capture because the traps will be out of reach of most dogs. Raccoons and fisher, however, are well adapted to climbing, and traps will remain effective in catching these species if they are placed five feet or more above ground.

The proposed regulation is needed to protect dogs that may come in contact with a trap while the dogs are being walked by their owners or are being used for hunting. At the same time, the proposed regulation should not negatively affect the effectiveness of traps used for catching the intended furbearers, primarily fisher and raccoon.

4. Costs

Trappers will be required to purchase or construct a container, made of wood, metal, plastic or wire, that will be used in the setting of certain body gripping traps. Alternatively, they may choose to set their traps at least five feet above the ground. For trappers who decide to use a container, the Department estimates that trappers will need to spend approximately five (5) dollars in materials to comply with the regulation. In some cases, the expense will be lower because suitable buckets, wire, and lumber may be used to construct the container and are available at very low expense or salvageable as scrap.

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 (trappers).

7. Duplication

There are no other local, state or federal regulations concerning the taking of fisher and raccoons.

8. Alternatives

An alternative to making the proposed changes is to leave the trapping regulations unchanged. However, this would mean that dogs would continue to be vulnerable to capture, injury, or death in traps set for the capture of furbearers.

9. Federal Standards

There are no federal government standards for the taking of fisher and raccoons.

10. Compliance Schedule

Trappers will be required to comply with the new rule as soon as it takes effect.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

Subject: Criminal history record check.

Purpose: To implement chapter 769 of the Laws of 2006 and a chapter of the Laws of 2006 (S. 6630) by requiring nursing homes, certified home health agencies, licensed home care service agencies and long term home health care programs to request criminal background checks of certain prospective employees.

Substance of emergency rule: This regulation adds a new Part 402 to Title 10 NYCRR.

Chapter 769 of the Laws of 2005, as amended by Chapters 331 and 673 of the Laws of 2006, imposed the requirement of criminal history record checks commencing September 1, 2006 for each prospective unlicensed employee of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers. The purpose of this legislation was to enable such providers to identify appropriate individuals to staff their facilities and programs, through a review of both State and federal criminal history information.

The legislation requires the State Department of Health to promulgate regulations that establish standards and procedures for the criminal history record checks required by the statute. Accordingly, these regulations establish provisions governing the procedures by which fingerprints will be obtained, and describe the requirements and responsibilities of the Department and the aforementioned providers with regard to this process.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

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 August 21, 2007.

Text of emergency 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

Regulatory Impact Statement

Statutory Authority:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivisions (3) and (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 and Chapters 331 and 673 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-24-07-00001-E

Filing No. 537

Filing date: May 24, 2007

Effective date: May 24, 2007

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

Action taken: Addition of Part 402 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 899-a(4); and Executive Law, section 845-b(12)

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

Specific reasons underlying the finding of necessity: Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 and Chapter 331 and 673 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate up to two "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. Two sets to the fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-B of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law. For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

Costs:

Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check and a \$24 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests

on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$700,000 (See "Costs to State Government").

Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately \$2.8 million.

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Paperwork:

Chapter 769 of the Laws of 2005 and Chapter 331 and 673 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

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

Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

Federal Standards:

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

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after

September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York state which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered “small businesses,” and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee’s eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See “Regulatory Impact Statement - Costs to State Government”).

For LHCSAs which are unable to access reimbursement from state and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See “Regulatory Impact Statement - Costs to State Government”).

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional “ink and roll” process. Under the “ink and roll” method, a trained individual rolls a person’s fingers in ink and then manually places the fingers on a card to leave an ink print. Two cards would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person’s name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b(1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Small Businesses and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000.

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chemung	Livingston	Seneca
Chenango	Madison	Steuben
Clinton	Montgomery	Sullivan
Columbia	Ontario	Tioga
Cortland	Orleans	Tompkins
Delaware	Oswego	Ulster
Essex	Otsego	Warren
Franklin	Putnam	Washington
Fulton	Rensselaer	Wayne
Genesee	St. Lawrence	Wyoming
Greene	Saratoga	Yates

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

Compliance Costs:

For programs located in rural areas eligible for Medicaid finding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See “Regulatory Impact Statement – Costs to State Government”).

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See “Regulatory Impact Statement – Costs to State Government”).

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb(2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

Job Impact Statement

A Job Impact Statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 will not have any adverse impact on the existing unlicensed employees of providers as they apply only to future prospective unlicensed employees hired or used on or after September 1, 2006. It is anticipated that the number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

EMERGENCY RULE MAKING

Payment for Nursing Services

I.D. No. HLT-24-07-00009-E

Filing No. 542

Filing date: May 29, 2007

Effective date: May 29, 2007

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

Action taken: Amendment of section 505.8(g) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 367-r(1-a)

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

Specific reasons underlying the finding of necessity: We are proposing that this regulatory amendment be adopted on an emergency basis to comply with the statutory effective date of enacted legislation. Chapter 109 of the Laws of 2006, part C, subdivision (d) provides that the amendments to section 367-r(1-a) of the SSL are effective January 1, 2007. Chapter 57 of the Laws of 2006, part A, section 101, subdivision (9) provides a sixty (60) day period following the receipt of federal approvals for the Department to implement the enhanced private duty nursing rate and provider certification requirement. Accordingly, for the quarter immediately following the January 1, 2007 effective date of the enacted legislation, the Department submitted on March 30, 2007 State plan amendment #07-01, requesting federal approval of a State plan amendment for non-institutional services related to rates of payment for private duty nursing services provided to medically fragile children, effective as of January 1, 2007. Promulgation of this regulatory amendment as soon as possible ensures that the Department will comply with the effective date mandated by the Legislature and within the sixty day period following federal approval of the State plan amendment. Moreover, the sooner the provisions of the statute can be implemented, the sooner the statutory goal will be met of ensuring a sufficient number of qualified providers to care for medically fragile children in non-institutional settings, with a consequent benefit to public health in terms of easier access to necessary health care. Therefore, complying with the normal rulemaking requirements would be contrary to the public interest, and the immediate adoption of the rule is necessary.

Subject: Payment for nursing services provided to medically fragile children in a non-institutionalized setting at an enhanced rate upon certification of training and experience.

Purpose: To amend a regulation governing payment of Medicaid reimbursement for private duty nursing services. The amendment authorizes payment for these services at an enhanced rate when provided to medically fragile children in the community upon a certification to the Department of Health that the provider is trained and experienced in caring for medically fragile children.

Text of emergency rule: A new paragraph (6) of subdivision (g) of Section 505.8 is added to read as follows:

6. *Effective January 1, 2007 through January 1, 2009, payment for nursing services provided to medically fragile children shall be at an enhanced rate which exceeds the provider's nursing services payment rate established by the Department of Health and approved by the State Budget Director under this subdivision.*

(a) *Medically fragile children means children who are at risk of hospitalization or institutionalization, but who are capable of being cared for at home if provided with appropriate home care services, including but not limited to case management services and continuous nursing services, and includes any children under the age of 21 receiving continuous nursing services pursuant to this section.*

(b) *The enhanced rate shall be determined by applying thirty percent (30%) of the provider's approved rate in addition to the rate otherwise payable under this subdivision, which increase is at least equivalent to the reimbursement rate for the AIDS Home Care Program specified in section 86-1.46(b) of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Licensed Home Care Services Agency (LHCSA) providers receiving reimbursement at the enhanced rate shall use such amounts only to recruit and retain nurses to ensure the delivery of nursing services to medically fragile children.*

(c) *The enhanced rate shall only be payable upon submission of a certification by a nurse provider, on forms and procedures prescribed by the Department, that he or she has satisfactory training and experience to provide nursing services to medically fragile children. A LHCSA provider*

shall make and submit such certifications on behalf of nurses rendering services to children under this subdivision.

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 August 26, 2007.

Text of emergency 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: regsna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance (Medicaid) program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363 of the SSL states that the goal of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department as the single state agency for the administration of the Medicaid program authorizes the Department to establish such regulations as may be necessary to implement the Medicaid program. Section 365-a of the SSL defines Medicaid to include payment of part or all of the cost of medically necessary care, services, and supplies, including the care and services of private duty nurses. Section 367-r(1-a) of the SSL authorizes the Department to increase the Medicaid payment rate for private duty nursing services provided to medically fragile children, in order to recruit and retain private duty nurses and ensure service delivery to medically fragile children.

Legislative Objectives:

The proposed regulatory amendment is necessary to implement the payment of enhanced Medicaid rates for private duty nursing services provided to medically fragile children, and to require such providers to certify that they are trained and experienced to care for medically fragile children.

Needs and Benefits:

Effective January 1, 2007, rates of payment for private duty nursing services provided to medically fragile children were increased to ensure the availability of a sufficient number of qualified providers to deliver services to these children in the community setting. Previously, providers were reimbursed at the hourly nursing services rate established for their geographic area, without regard to the relative acuity of the pediatric non-institutional population, the corresponding intensity of continuous medical intervention and supervision necessary to sustain these children safely in the community setting, or a shortage of qualified providers. The need for continuous coverage by nurses possessing the specialized training and experience these cases require often resulted in a shortage of available qualified providers sufficient to ensure service delivery in a geographic area. The increased rate of payment will facilitate the recruitment and retention of qualified private duty nurses by providing adequate financial incentive to attract and retain skilled providers sufficiently qualified to meet the complex medical needs of these children. The proposed regulatory amendment requires providers to certify to the Department their requisite training and experience in order to receive the enhanced rate, to ensure that only qualified providers are recruited. Social Services Law Section 367-r requires the Department to consider several factors in establishing the enhanced rate, including the case mix adjustment factor used for AIDS home care program services. The proposed regulatory amendment calculates the enhanced rate as a thirty percent (30%) add-on to the provider's standard nursing services rate, which is equivalent to using the AIDS home care case mix adjustment factor. Because the entire population of pediatric patients receiving continuous at-home private duty nursing services is by definition medically fragile, the regulation provides for payment of the enhanced rate for such services when provided to any Medicaid enrollee under age 21 in a community setting.

Costs:

There should be no additional costs associated with this regulatory amendment. While the regulatory amendment will result in the payment of increased Medicaid reimbursements to qualified providers, this will be offset by cost savings achieved from caring for increased numbers of children in the more cost-effective community setting. Consequently, rates of payment established through this regulatory amendment will result in budget neutrality to the Medicaid program.

Local government mandates:

The proposed regulatory amendment does not impose any new mandates to local social services districts.

Paperwork:

The proposed regulatory amendment will result in a minimal amount of additional paperwork for medical providers, since they must complete and submit a one-page certification of training and experience to Department, upon which a specialty code will be added to the provider's enrollment file to enable the provider to receive the enhanced rate.

Duplication:

This proposed regulatory amendment does not duplicate, overlap, or conflict with any other State or federal law or regulations.

Alternatives: Section 367-r of the SSL authorizes the payment of an enhanced rate to qualified providers upon demonstration of satisfactory training and experience to the Department. No alternatives were considered.

Federal Standards:

The proposed regulatory amendment does not exceed any minimum federal standards.

Compliance Schedule:

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

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

Job Impact Statement

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

Higher Education Services Corporation

NOTICE OF ADOPTION

Adjustments to Income

I.D. No. ESC-14-07-00002-A

Filing No. 538

Filing date: May 24, 2007

Effective date: June 13, 2007

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

Action taken: Amendment of section 2202.3 of Title 8 NYCRR.

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

Subject: Adjustments to income.

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

Text or summary was published in the notice of proposed rule making, I.D. No. ESC-14-07-00002-P, Issue of April 4, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-24-06-00016-P	June 14, 2006
PSC-17-07-00010-P	April 25, 2007

NOTICE OF ADOPTION

Inter-Carrier Telephone Service Quality Standards and Metrics by the Carrier Work Group

I.D. No. PSC-38-06-00002-A

Filing date: May 23, 2007

Effective date: May 23, 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, adopted an order approving modifications to the Inter-Carrier Service Quality Guidelines.

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

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To review recommendations from the Carrier Work Group to incorporate appropriate modifications to the existing inter-carrier telephone service quality measures and standards.

Substance of final rule: The Commission adopted an order approving modifications to the Inter-Carrier Service Quality Guidelines, consisting of administrative changes and the addition of a new product to the PR-4-05 performance metric, subject to the terms 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. (97-C-0139SA28)

NOTICE OF ADOPTION

Submetering of Electricity by Stellar Management on behalf of West 97th Street Realty Corporation

I.D. No. PSC-45-06-00011-A

Filing date: May 24, 2007

Effective date: May 24, 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, adopted an order in Case 06-E-1233 approving the petition filed by Stellar Management, on behalf of West 97th Street Realty Corporation, to submeter electricity at 50 W. 97th 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 Stellar Management, on behalf of West 97th Street Realty Corporation, to submeter electricity at 50 W. 97th St., New York, NY.

Substance of final rule: The Commission approved a request by Stellar Management, on behalf of West 97th Street Realty Corporation, to submeter electricity at 50 West 97th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-1233SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Energy Investment Systems, Inc.

I.D. No. PSC-46-06-00021-A
Filing date: May 25, 2007
Effective date: May 25, 2007

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

Action taken: The commission, on May 16, 2007, adopted and order in Case 06-E-1299 approving the petition filed by Energy Investment Systems, Inc., on behalf of Heywood Towers Associates and Dalton Management Company, to submeter electricity at 175 W. 90th 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 Energy Investment Systems, Inc., on behalf of Heywood Towers Associates and Dalton Management Company, to submeter electricity at 175 W. 90th St., New York, NY.

Substance of final rule: The Commission approved a request by Energy Investment Systems, Inc., on behalf of Heywood Towers Associates and Dalton Management Company, to submeter electricity at 175 West 90th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-1299SA1)

NOTICE OF ADOPTION

Approval of Gas Meters and Accessories by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-05-07-00005-A
Filing date: May 23, 2007
Effective date: May 23, 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, approved Consolidated Edison Company of New York, Inc.'s request for the use of the Romet RM23000 series of rotary meters. The Romet RM23000 TCID is equipped with an instrument drive module, and the RM23000 TC without instrument drive module for use in commercial and industrial applications.

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

Subject: Approval of types of gas meters and accessories.

Purpose: To approve the family of Romet RM23000 temperature-compensated meters to be utilized in New York State.

Substance of final rule: The Public Service Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s request for the use of the Romet RM23000 TC and the RM23000 TCID rotary meters, manufactured by Romet Limited, to be used for gas revenue billing applications for commercial and industrial installations 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-G-1568SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Bay City Metering Company

I.D. No. PSC-06-07-00019-A
Filing date: May 25, 2007
Effective date: May 25, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order in Case 07-E-0071 approving the petition filed by Bay City Metering Company, Inc., on behalf of Astor Court Owners Corp., to submeter electricity at 205 W. 89th 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 Bay City Metering Company, Inc., on behalf of Astor Court Owners Corp., to submeter electricity at 205 W. 89th St., New York, NY.

Substance of final rule: The Commission approved a request by Bay City Metering Company, Inc., on behalf of Astor Court Owners Corp., to submeter electricity at 205 West 89th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-0071SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Emerald Green Lake Louise Marie Water Company, Inc.

I.D. No. PSC-06-07-00022-A
Filing date: May 25, 2007
Effective date: May 25, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order approving Emerald Green Lake Louise Marie Water Company, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for water service, P.S.C. No. 1.

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

Subject: Water rates and charges.

Purpose: To approve Emerald Green Lake Louise Marie Water Company, Inc.'s request to increase annual revenues by \$47,843 or 15.2 percent and impose a surcharge of \$12 per customer per year for a period of 10 years effective Jan. 1, 2008.

Substance of final rule: The Commission adopted an order allowing Emerald Green Lake Louise Marie Water Company, Inc. to increase annual revenues by \$47,843 or 15.2% and to impose a surcharge of \$12 per

customer per year for a period of 10 years effective January 1, 2008, 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-1584SA1)

NOTICE OF ADOPTION

Submetering of Electricity by American Metering & Planning Services, Inc.

I.D. No. PSC-09-07-00009-A

Filing date: May 24, 2007

Effective date: May 24, 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, adopted an order in Case 07-E-0160 approving the petition filed by American Metering and Planning Services, Inc., to submeter electricity at 343-345 W. 51st 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 American Metering and Planning Services, Inc., to submeter electricity at 343-345 W. 51st St., New York, NY.

Substance of final rule: The Commission approved a request by American Metering and Planning Services, Inc., to submeter electricity at 343-345 West 51st Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-01600SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Energy Investment Systems, Inc.

I.D. No. PSC-24-07-00010-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Energy Investment Systems, Inc., on behalf of Court Plaza Associates and ETC Management Corporation, to submeter electricity at 123-33 83rd Ave., Queens, 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 Energy Investment Systems, Inc., on behalf of Court Plaza Associates and ETC Management Corporation, to submeter electricity at 123-33 83rd Ave., Queens, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Energy Investment Systems, Inc., on behalf of Court Plaza Associates

and ETC Management Corporation, to submeter electricity at 123-33 83rd Avenue, Queens, New York.

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

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

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

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

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

(07-E-0580SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Bay City Metering Company, Inc. on behalf of Affirmative Arco Management Company

I.D. No. PSC-24-07-00011-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Bay City Metering Company, Inc., on behalf of Affirmative Arco Management Company, to submeter electricity at 2538 Valentine Ave., Bronx, 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 Bay City Metering Company, Inc., on behalf of Affirmative Arco Management Company, to submeter electricity at 2538 Valentine Ave., Bronx, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Bay City Metering Company, Inc., on behalf of Affirmative Arco Management Company, to submeter electricity at 2538 Valentine Avenue, Bronx, New York.

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

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

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

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

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

(07-E-0609SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gas Efficiency Program by the City of New York

I.D. No. PSC-24-07-00012-P

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

Proposed action: The Public Service Commission (PSC) is considering a petition filed by the City of New York seeking rehearing of the PSC's May 16, 2007 decision establishing a gas efficiency program in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison) for the 2007-08 heating season. The PSC may reject the petition for rehearing; it may modify or clarify its prior order with respect to the

funding level of the gas efficiency program, the role of New York City in administering the program, and the inclusion of administrative, monitoring and evaluation activities in the \$14 million program budget; or take other action in considering issues raised by the New York City petition for rehearing.

Statutory authority: Public Service Law, section 22

Subject: Gas efficiency program for the 2007-08 heating season in the Con Edison service territory.

Purpose: To rehear the PSC's May 16, 2007 decision in Case 03-G-1671.

Substance of proposed rule: The Public Service Commission (PSC) is considering a petition filed by the City of New York seeking rehearing of the PSC's May 16, 2007 decision establishing a gas efficiency program in the service territory of Consolidated Edison Company of New York, Inc. for the 2007-08 heating season. The PSC may reject the petition for rehearing; it may modify or clarify its prior order with respect to the funding level of the gas efficiency program, the role of New York City in administering the program, and the inclusion of administrative, monitoring and evaluation activities in the \$14 million program budget; or take other action in considering issues raised by the New York City petition for rehearing.

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

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

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

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

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

(03-G-1671SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing of an Order by National Energy Marketers Association

I.D. No. PSC-24-07-00013-P

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

Proposed action: The Public Service Commission is considering rehearing of the order requiring development of utility-specific guidelines for electric commodity supply portfolios and instituting a phase II to address longer-term issues, issued April 19, 2006 in Case 06-M-1017, pursuant to a petition from the National Energy Marketers Association.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10) and (12)

Subject: Rehearing of an order.

Purpose: To consider rehearing of an order.

Substance of proposed rule: The Public Service Commission is considering rehearing of the Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues, issued April 19, 2006 in Case 06-M-1017, pursuant to a petition from the National Energy Marketers Association. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(06-M-1017SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Energy Efficiency Portfolio Standard

I.D. No. PSC-24-07-00014-P

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

Proposed action: The commission has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015. The proceeding will include development and adoption of an electric and natural gas energy efficiency portfolio standard, which will decrease the State's energy use through increased conservation and efficiency.

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

Subject: An energy efficiency portfolio standard.

Purpose: To consider the appropriate means to achieve the energy efficiency performance standard.

Substance of proposed rule: The Commission has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15% from expected levels by the year 2015. The proceeding will include development and adoption of an electric and natural gas Energy Efficiency Portfolio Standard, which will decrease the State's energy use through increased conservation and efficiency.

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

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

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

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

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

(07-M-0548SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Cable Franchise Renewal Process by the City of New York

I.D. No. PSC-24-07-00015-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 the City of New York for a waiver of the deadline in section 891.2(b)(2) of the commission's rules to the extent that this provision applies to the city's cable franchise renewal process. Section 891.2(b)(2) requires that a public process for review of the cable company's performance during the current franchise term be completed prior to the expiration of the franchise term.

Statutory authority: Public Service Law, section 222(1) and (3)

Subject: Waiver of the deadline in section 891.2(b)(2) of the commission's rules.

Purpose: To consider waiver of the deadline in 16 NYCRR section 891.2(b)(2).

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition from the City of New York for a waiver of the deadline in Section 891.2(b)(2) of the Commission's rules to the extent that this provision applies to the City's cable franchise renewal process. Section 891.2(b)(2) requires that a public

process for review of the cable company's performance during the current franchise term be completed prior to the expiration of the franchise term.

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

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

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

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

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

(07-V-0532SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Ovid

I.D. No. PSC-24-07-00016-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 Ovid (Seneca 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 Ovid (Seneca 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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-V-0571SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Hector

I.D. No. PSC-24-07-00017-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 Hector (Schuyler 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 Hector (Schuyler 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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-V-0572SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Montour

I.D. No. PSC-24-07-00018-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 Montour (Seneca 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), 895.5(c) from Empire Video Services Corporation regarding buildout, primary service area and line extension policies for the Town of Montour (Seneca 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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-V-0573SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Cayuta

I.D. No. PSC-24-07-00019-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 Cayuta (Schuyler 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 Cayuta (Schuyler 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. Brillings, 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-0574SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Newfield

I.D. No. PSC-24-07-00020-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 Newfield (Tompkins 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 Newfield (Tompkins 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. Brillings, 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-0575SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Lodi

I.D. No. PSC-24-07-00021-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 Lodi (Seneca 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 Lodi (Seneca 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. Brillings, 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-0576SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Wheeler

I.D. No. PSC-24-07-00022-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 Wheeler (Steuben 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 Wheeler (Steuben 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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-V-0577SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Jerusalem

I.D. No. PSC-24-07-00023-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 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 Jerusalem (Yates 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 Jerusalem (Yates 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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-V-2578SA1)

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

Waiver of Rules by Empire Video Services Corporation, Town of Prattsburgh

I.D. No. PSC-24-07-00024-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 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 Prattsburgh (Steuben 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 Prattsburgh (Steuben 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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-V-0605SA1)

Racing and Wagering Board

**EMERGENCY
RULE MAKING**

Disqualification of a Horse for Intentional or Careless Interference

I.D. No. RWB-24-07-00007-E

Filing No. 539

Filing date: May 25, 2007

Effective date: May 25, 2007

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

Action taken: Amendment of section 4035.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 207 and 212

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

Specific reasons underlying the finding of necessity: This rule is necessary to preserve the integrity of pari-mutuel racing and wagering in New York State, and thereby insure that the State can receive reasonable revenue in support of government arising from such wagering. This rule is designed to protect the betting public from intentional or negligent misconduct committed during the course of a horse race, and ensure that a jockey's conduct during the course of a race is both professional and beyond reproach. It is urgent that this rule be adopted to assure the public confidence and integrity of parimutuel racing on both a daily basis and in light of the fact that the Belmont Stakes, the Whitney Handicap at Saratoga (a Breeders' Cup qualifier) and scores of other world-class thoroughbred horse races will be conducted in New York over the course of the next several months. This rule is necessary to ensure public confidence in such

events, as well as provide for the continuing safety of the participating horses and jockeys.

Subject: Disqualification of a horse for intentional or careless interference.

Purpose: To prohibit intentional or careless interference by a horse during the course of a race. During the course of a recent administrative hearing where a horse was disqualified due to a jockey striking another horse in the head with a whip as the second horse was advancing, the appealing party successfully argued that the contact was not willful and that since subdivision (d) of section 4035.2 of the board's thoroughbred rules did not expressly prohibit a jockey from carelessly striking another horse, the disqualification was erroneous. In fact, existing section 4035.2(d) prohibits a jockey from riding "willfully or carelessly" while the prohibition against striking another horse or jockey merely had to be willful in order to be a violation. There is no provision for "carelessness" in the existing rule as it pertains to striking another horse or jockey. This loophole creates a dangerous racing environment whereby stewards would have to determine that a jockey acted willfully in striking another horse or jockey with a whip before disqualifying a horse for such misconduct. This rulemaking will close that loophole and is necessary to ensure the integrity of horseracing.

Text of emergency rule: Subdivision (d) of Section 4035.2 of 9E NYCRR is amended to read as follows:

(d) [If a jockey willfully strikes another horse or jockey or rides willfully or carelessly so as to injure another horse, which is in no way in fault, or so as to cause other horses to do so, his horse is disqualified.] *A jockey shall not ride carelessly or willfully such that his mount, equipment, or any item or object under his or her control interferes with, impedes, intimidates, or injures another horse or jockey in the race, including that a jockey shall not carelessly or willfully strike another horse or jockey or his or her equipment or with his or her whip. The stewards may disqualify such a horse if the foul was willful or may have altered the finish of the race; the stewards may also take into consideration mitigating factors such as whether the impeded horse was partly at fault or the foul was caused by the fault of some other horse or jockey.*

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 August 22, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL), subdivision 1 of section 101, section 207 and section 212. Subdivision 1 of the RPWBL grants the Racing and Wagering Board (Board) general jurisdiction over all horse racing activities in the state. Section 207 states that all thoroughbred races or race meetings shall be subject to such reasonable rules and regulations from time to time prescribed by the Board. Section 212 of the RPWBL requires that three stewards supervise each thoroughbred race meeting, and that such stewards shall exercise powers and perform such duties at each race meeting as may be prescribed by the rules of the Board.

2. Legislative objectives: To enable the Board to assure the public's confidence in — and preserve the integrity of — racing at pari-mutuel wagering tracks located in New York State, and to ensure that the state can receive reasonable revenue in support of government arising from such wagering.

3. Needs and benefits: This rule is necessary to ensure safe and professional conduct of jockeys during the course of a thoroughbred race, to preserve the integrity of pari-mutuel racing and wagering in New York State, and to insure that the state can receive reasonable revenue in support of government arising from such wagering. This rule is designed to protect the betting public from intentional or negligent misconduct committed during the course of a horse race, and ensure that a jockey's conduct during the course of a race is both professional and beyond reproach. This rule is necessary to ensure public confidence in such events.

The purpose of section 4035.2(d) is to prohibit intentional or careless interference during the course of a race. Previously, the rule generally prohibited such interference. However, during the course of a recent administrative hearing where a horse was disqualified due to a jockey striking another horse in the head with a whip as the second horse was advancing, the appealing party successfully argued that the contact was not willful and that since subdivision (d) of Section 4035.2 of the Board's thorough-

bred rules did not expressly prohibit a jockey from carelessly striking another horse, the disqualification was erroneous. In fact, Section 4035.2(d) prohibits a jockey from riding "willfully or carelessly" while the prohibition against striking another horse or jockey merely had to be willful in order to be a violation. There is no provision for "carelessness" in the rule as it pertains to striking another horse or jockey. This loophole creates a dangerous racing environment whereby stewards would have to determine that a jockey acted willfully in striking another horse or jockey with a whip before disqualifying a horse for such misconduct. This rulemaking will close that loophole and is necessary to ensure the integrity of horseracing.

This amendment is also necessary from a legal perspective in that it adopts more specific language regarding what action or actions constitute foul riding. The language of the current rule is narrow and needs to define all conduct that comprises interference. In addition to interfering with another horse or jockey, the language of the amendment also prohibits a jockey from impeding, intimidating or injuring another horse. Similarly, current language is vague as to what constitutes striking. The amendment specifies the prohibited use of a mount, equipment or other object under a jockey's control. In short, this amendment is necessary to close all technical loopholes regarding foul riding.

This amendment is necessary to grant the stewards necessary discretion in considering mitigating factors as to whether disqualification is necessary.

4. Costs:

(a) Cost to regulated parties for the implementation of continuing compliance with the rule: None. This rule pertains to the conduct of jockeys during the course of a horse race, and imposes no costs upon them.

(b) Costs to the agency, state and local governments for the implementation and continuation of the rule: None. The Board is the sole government agency responsible for the regulation of thoroughbred racing in New York State. This rule can be enforced under the existing regulatory system with no added costs.

(c) The information, including the source of such information and the methodology upon which the cost analysis is based: This cost information was determined by the Office of Counsel of the New York State Racing and Wagering Board.

(d) There are no costs associated with this rule, so no estimates have been provided.

5. Local government mandates: None. Local governments do not regulate horse racing in the State of New York.

6. Paperwork: None. Stewards would use the existing paperwork requirements for riding violations.

7. Duplication: None. The Board is the only entity whose duty is to regulate horse racing in the State of New York, and there are no other controlling rules or regulations.

8. Alternatives: There are no other alternatives to consider. This rulemaking is designed to close technical loopholes in a rule that is designed to ensure the safety of jockeys and ensure the integrity of thoroughbred horse racing in New York State. The alternative would be to leave the existing rule in place, which is unacceptable given that it is not specific enough as it applies to prohibited conduct, nor does it grant adequate discretion to stewards in cases where disqualification is not merited.

9. Federal standards: None. However, the use of whip provision of this rule amendment is consistent with the Model Rule on Interference and Use of Whip prescribed by the Association of Racing Commissioners International, which states that "No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment."

10. Compliance schedule: This rulemaking will be effective upon submission to the Department of State as an emergency rulemaking and will remain in effect for 90 days. This rulemaking will become permanent upon adoption after publication in the *State Register* and after the statutorily required 45-day public comment period.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment addresses the conduct of jockeys during a professional sporting event. It does not diminish their substantive job duties or their opportunity to earn a living. The rule prohibits a jockey from striking or injuring another jockey or horse during a thoroughbred race, and allows race stewards to disqualify a horse if its jockey violates the rule. As is apparent from the nature of the rule, the rule neither affects small business, local governments, jobs nor rural areas. Prohibiting riding fouls during the course of a thoroughbred race, or otherwise disqualifying such horse, does not impact upon a small

business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry. The rule can be enforced using existing regulatory methods and technology.

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

Disqualification of a Horse for Intentional or Careless Interference

I.D. No. RWB-24-07-00006-P

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

Proposed action: This is a consensus rule making to amend section 4035.2(d) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 207 and 212

Subject: Disqualification of a horse for intentional or careless interference.

Purpose: To prohibit intentional or careless interference by a horse during the course of a race. During the course of a recent administrative hearing where a horse was disqualified due to a jockey striking another horse in the head with a whip as the second horse was advancing, the appealing party successfully argued that the contact was not willful and that since subdivision (d) of section 4035.2 of the board's thoroughbred rules did not expressly prohibit a jockey from carelessly striking another horse, the disqualification was erroneous. In fact, existing section 4035.2(d) prohibits a jockey from riding "willfully or carelessly" while the prohibition against striking another horse or jockey merely had to be willful in order to be a violation. There is no provision for "carelessness" in the existing rule as it pertains to striking another horse or jockey. This loophole creates a dangerous racing environment whereby stewards would have to determine that a jockey acted willfully in striking another horse or jockey with a whip before disqualifying a horse for such misconduct. This rulemaking will close that loophole and is necessary to ensure the integrity of horseracing.

Text of proposed rule: Subdivision (d) of Section 4035.2 of 9E NYCRR is amended to read as follows:

(d) [If a jockey willfully strikes another horse or jockey or rides willfully or carelessly so as to injure another horse, which is in no way in fault, or so as to cause other horses to do so, his horse is disqualified.] *A jockey shall not ride carelessly or willfully such that his mount, equipment, or any item or object under his or her control interferes with, impedes, intimidates, or injures another horse or jockey in the race, including that a jockey shall not carelessly or willfully strike another horse or jockey or his or her equipment or with his or her whip. The stewards may disqualify such a horse if the foul was willful or may have altered the finish of the race; the stewards may also take into consideration mitigating factors such as whether the impeded horse was partly at fault or the foul was caused by the fault of some other horse or jockey.*

Text of proposed rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305, (518) 395-5400, e-mail: info@racing.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

Board staff has determined that no person is likely to object to the rule as written because it closes a technical loophole in the thoroughbred Foul Riding Rule, and the new language of the rule is consistent with the long-accepted spirit of the rule, which is that a jockey risks disqualification by the stewards for striking another jockey or horse in any manner.

The rulemaking includes more specific language than the current rule as to what constitutes foul riding, which eliminates any ambiguities about what constitutes foul riding. Board staff has determined that no person is likely to object to this amendment because it clarifies exactly what conduct is prohibited and eliminates grey areas of conduct.

This amendment also grants the track stewards more discretion in considering whether a disqualification is appropriate in the totality of

circumstances of a race, rather than impose mandatory disqualification based on inconsequential contact between horses or jockeys. Board staff has determined that no person is likely to object to the rule as written because it allows the stewards to take into consideration the totality of circumstances in each race before determining whether or not a horse should be disqualified. This rule would allow stewards to make a reasonable decision based upon the circumstances of the race, rather than bind them to a mandatory disqualification penalty. Board staff has determined that no person is likely to object to granting the stewards such discretion.

Job Impact Statement

This proposal does not require a Job Impact Statement as the amendment addresses the conduct of jockeys during a professional sporting event. It does not diminish their substantive job duties or their opportunity to earn a living. The rule prohibits a jockey from striking or injuring another jockey or horse during a thoroughbred race, and allows race stewards to disqualify a horse if its jockey violates the rule. As is apparent from the nature of the rule, the rule neither affects small business, local governments, jobs nor rural areas. Prohibiting riding fouls during the course of a thoroughbred race, or otherwise disqualifying such horse, does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry. The rule can be enforced using existing regulatory methods and technology.