

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 Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State-Administered Defined Contribution Service Award Programs for Volunteer Firefighters

I.D. No. AAC-12-07-00002-P

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

Proposed action: Addition of Part 154 to Title 2 NYCRR.

Statutory authority: General Municipal Law, sections 214, 215, 216, 216-a, 216-b, 216-c, 217, 217-a, 218, 219-a; L. 2006, ch. 714, section 13

Subject: State-administered defined contribution service award programs for volunteer firefighters.

Purpose: To specify the procedures for the adoption and administration of State-administered defined contribution service award programs for volunteer firefighters and for the transfer to State administration of existing locally-administered defined contribution service award programs for volunteer firefighters.

Substance of proposed rule (Full text is posted at the following State website: www.osc.state.ny.us): Section 154.1 describes the scope of Part 154, covering State-administered defined contribution service award programs for volunteer firefighters. A political subdivision may adopt a new

defined contribution volunteer firefighter service award program to be administered by the State or may transfer to the State the responsibility for administering an existing defined contribution volunteer firefighter service award program previously administered locally, subject to the requirements of Part 154.

Section 154.2 defines terms used in Part 154.

Section 154.3 sets forth the requirements for a local government Sponsor to notify the Comptroller of the adoption of a new State-administered defined contribution volunteer firefighter service award program or the transfer of an existing defined contribution volunteer firefighter service award program from local administration to State administration.

Section 154.4 provides for the execution of an Adoption or Transfer Agreement between a local government Sponsor and the State. The Adoption or Transfer Agreement will cover the obligations of each local government Sponsor and set forth the locally-determined features of the State-administered defined contribution volunteer firefighter service award program.

Section 154.5 authorizes the collection of personal identifying information necessary for the administration of the program and requires that such information be protected from unlawful disclosure.

Section 154.6 provides procedures for the determination of service credit and the payment of contributions therefor.

Section 154.7 provides procedures for the determination of optional prior service credit for up to five years prior to the commencement of a defined contribution service award program and permits prior service costs to be paid in a lump sum or in annual installments over five years.

Section 154.8 provides procedures for the distribution of State-administered defined contribution volunteer firefighter service awards when a participant becomes eligible for such an award.

Section 154.9 provides procedures for a local government Sponsor to notify the Administrator of an amendment to a State-administered defined contribution volunteer firefighter service award program consistent with the provisions of General Municipal Law Article 11-A or the termination of State administration of a defined contribution volunteer firefighter service award program.

Section 154.10 provides for the Comptroller to serve as Administrator of State-administered service award programs or to retain an administrative service agency or a financial organization to administer all or any part of a defined contribution volunteer firefighter service award program, and specifies the duties of the Administrator.

Section 154.11 makes the Administrator responsible for the preparation of a program document setting forth the rights and obligations of Sponsors and participants and the procedures for administration of State-administered defined contribution volunteer firefighter service award programs.

Section 154.12 requires the Administrator to make reports to each Sponsor and to issue confidential account statements for each participant.

Section 154.13 provides for disclosure of a State-administered defined contribution volunteer firefighter service award program summary, and any modifications thereto, to each participant.

Section 154.14 sets forth the standards to be followed in the selection of administrative service agencies or financial organizations to act as service providers.

Section 154.15 requires a service provider to observe a fiduciary standard of care.

Section 154.16 prohibits service providers from using participant information to solicit or offer to participants in a State-administered defined contribution volunteer firefighter service award program any other product or service.

Text of proposed rule and any required statements and analyses may be obtained from: William J. Murray, Office of the State Comptroller, 110 State St., 14th Fl., Albany, NY 12236-0001, (518) 474-9024, e-mail: bmurray@osc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

Chapter 714 of the Laws of 2006 amended Article 11-A of the General Municipal Law to authorize the establishment of an optional State-administered volunteer firefighter service award program. General Municipal Law sections 214, 215, 216, 216-a, 216-b, 216-c, 217, 217-a, and 219-a generally apply to such service award programs, and General Municipal Law section 218 specifically applies to defined contribution volunteer firefighter service award programs. General Municipal Law section 216-c[3] requires the Comptroller to promulgate rules and regulations governing State-administered volunteer firefighter service award programs, including, but not limited to, standards for the selection of service providers, the method and timing of the payments required to be made by the sponsors, reporting requirements, matters relating to the preparation of a plan document, application procedures for transfer into the State-administered program, and any other matter relating to the service award programs. Section 13 of Chapter 714 provided for the State-administered volunteer firefighter service award program to be effective as of June 1, 2007, and authorized the Comptroller to adopt the necessary rules and regulations on or before that date.

2. Legislative Objectives:

The regulations contained in this Part provide for the establishment and operation of an optional State-administered defined contribution volunteer firefighter service award program, including the creation of new State-administered defined contribution volunteer firefighter service award programs by local sponsors and the conversion of locally-administered defined contribution volunteer firefighter service award programs into State-administered programs. Regulations in a separate Part cover State-administered defined benefit volunteer firefighter service award programs.

3. Needs and Benefits:

The adoption of Part 154 will make it possible for local sponsors to choose to have defined contribution volunteer firefighter service award programs administered by the State.

4. Costs:

a. The major cost of the proposed rule to local governments that sponsor State-administered service award programs would be the fees charged by service providers retained by the Comptroller, through a competitive process, to serve as program Administrator and as trustee. Because these fees will be determined in future contracts entered into between the Comptroller and the service providers, the fees are currently indeterminate. Due to economies of scale, however, it is anticipated that the fees provided for in such contracts will be less than the fees for comparable services paid by the sponsors of locally-administered service award programs.

b. Costs to the agency and the State for the implementation and continuation of the rule are significant but indeterminate. The local sponsors will continue to be responsible for all the costs of operating and administering the programs, including the costs of administrative, actuarial, and investment services. Costs to local governments that sponsor defined contribution volunteer firefighter service award programs and transfer the responsibilities to the State are expected to eventually be less than current costs, since economies of scale should be realized as the number of State-administered programs increases.

c. The basis for the foregoing cost estimates is an analysis of the proposed regulations and the experience of the Office of the State Comptroller in supervising the accounts of political subdivisions of the State.

5. Local Government Mandates:

The rule requires local governments that establish new State-administered defined contribution volunteer firefighter service award programs or transfer existing locally-administered programs to State administration to follow prescribed procedures. The cost of financing existing obligations of a locally-administered service award program must be paid to the Comptroller when administrative responsibility is transferred to the State.

6. Paperwork:

Local governments seeking to establish new State-administered defined contribution volunteer firefighter service award programs or to transfer existing locally-administered programs to State administration are required to file a Notice of Adoption or Transfer with the Comptroller, to sign an Adoption or Transfer Agreement, and to periodically report the

names, addresses, and other information relating to the volunteer firefighters who participate in the programs, and such other information as may be needed for the administration of the programs.

7. Duplication:

None.

8. Alternatives:

No significant alternatives were considered.

9. Federal Standards:

None.

10. Compliance Schedule:

None. Local government sponsors are authorized, but not required, to have service award programs administered through the Comptroller's office.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule sets forth the requirements for adopting a State-administered defined contribution volunteer firefighter service award program or for transferring administrative responsibility to the State for an existing locally-administered defined contribution volunteer firefighter service award program. Small businesses will not be affected by adoption of the rule.

2. Compliance requirements:

None. Local government sponsors are authorized, but not required, to have service award programs administered through the Comptroller's office.

3. Professional services:

Notices of adoption or transfer and notices of amendment or termination must include an opinion of legal counsel assuring that the local government Sponsor has conducted the necessary proceedings and complied with the applicable laws and regulations.

4. Compliance costs:

The rule imposes no initial capital costs. The cost of obtaining required legal opinions will vary, depending on whether opinions are obtained from in-house or outside counsel. For local governments using outside counsel, the cost will vary according to the complexity of the defined contribution volunteer firefighter service award program which is the subject of the legal opinion. For an existing program, legal counsel will have to analyze the existing records, and costs will vary depending on the state of the records and the counsel's billing rate. The cost of financing existing obligations of a locally-administered service award program must be paid to the Comptroller when administrative responsibility is transferred to the State.

5. Economic and technological feasibility:

The rule imposes no technological requirements, and the economic feasibility of financing a defined contribution volunteer firefighter service award program depends upon the strength of a local government's revenue base, which is not affected by the rule.

6. Minimizing adverse impact:

Since the rule imposes no adverse impacts beyond the burdens that are already implicit in the establishment of a statutorily authorized service award program, no approaches for minimizing adverse impacts were considered.

7. Small business and local government participation:

Notice of the rule has been disseminated to statewide fire service organizations and posted on the agency's website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to every rural area in the State.

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

The rule requires all local government sponsors of State-administered defined contribution volunteer firefighter service award programs, including those in rural areas, to keep records of the services rendered by volunteer firefighters, to report information to the State administrator, and to comply with the payment and other requirements of the program. At the time of commencing or terminating participation in a State-administered defined contribution volunteer firefighter service award program, local government sponsors, including those in rural areas, must obtain a legal opinion assuring that all necessary legal proceedings have been conducted and that the sponsor has complied with applicable laws and regulations.

3. Costs:

Costs for local government sponsors in rural areas will vary depending on the size of the affected volunteer fire company or volunteer fire department, the number of participating members, and the length of time a defined contribution volunteer firefighter service award program has been in existence.

4. Minimizing adverse impact:

Since the rule imposes no adverse impacts beyond the burdens that are already implicit in the establishment of a statutorily authorized service award program, no approaches for minimizing adverse impacts were considered.

5. Rural area participation:

Notice of the rule has been disseminated to statewide fire service organizations and posted on the agency's website.

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

State-Administered Defined Benefit Service Award Programs for Volunteer Firefighters

I.D. No. AAC-12-07-00005-P

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

Proposed action: Addition of Part 155 to Title 2 NYCRR.

Statutory authority: General Municipal Law, sections 214, 215, 216, 216-a, 216-b, 216-c, 217, 217-a, 219, 219-a; L. 2006, ch. 714, section 13

Subject: State-administered defined benefit service award programs for volunteer firefighters.

Purpose: To specify the procedures for the adoption and administration of State-administered defined benefit service award programs for volunteer firefighters and for the transfer to State administration of existing locally-administered defined benefit service award programs for volunteer firefighters.

Substance of proposed rule (Full text is posted at the following State website: www.osc.state.ny.us): Section 155.1 describes the scope of Part 155, covering State-administered defined benefit service award programs for volunteer firefighters. A political subdivision may adopt a new defined benefit volunteer firefighter service award program to be administered by the State or may transfer to the State the responsibility for administering an existing defined benefit volunteer firefighter service award program previously administered locally, subject to the requirements of Part 155.

Section 155.2 defines terms used in Part 155.

Section 155.3 details the procedure for local adoption of a State-administered defined benefit volunteer firefighter service award program.

Section 155.4 sets forth the requirements for a local government Sponsor to give notify the Comptroller of the adoption of a new State-administered defined benefit volunteer firefighter service award program or the transfer of an existing defined benefit volunteer firefighter service award program from local administration to State administration.

Section 155.5 provides for the execution of an Adoption or Transfer Agreement between a local government Sponsor and the State. The Adoption or Transfer Agreement will cover the obligations of each local government Sponsor and set forth the locally-determined features of the State-administered defined benefit volunteer firefighter service award program.

Section 155.6 authorizes the collection of personal identifying information necessary of the administration of the program and requires that such information be protected from unlawful disclosure.

Section 155.7 requires local volunteer fire companies or volunteer fire departments and Sponsors of State-administered defined benefit service award programs to maintain records of firefighting service performed by volunteer members of such companies or departments and to report such service to the State.

Section 155.8 provides procedures for the determination of optional prior service credit for up to five years prior to the commencement of a defined benefit service award program and permits prior service costs to be paid in a lump sum or in annual installments over five years.

Section 155.9 provides procedures for the determination of service credit and the payment of contributions therefor.

Section 155.10 provides that a volunteer firefighter shall forfeit any service credit in a State-administered defined benefit volunteer firefighter service award program if the volunteer firefighter does not complete five years of service, except that such credit shall be restored if the volunteer firefighter resumes service in the same volunteer fire company or volunteer fire department within five calendar years after ceasing to serve as a volunteer firefighter in such company or department.

Section 155.11 provides procedures relating to the distribution of State-administered defined benefit volunteer firefighter service awards when a participant becomes eligible for such an award.

Section 155.12 provides for the amendment of a State-administered defined benefit volunteer firefighter service award program consistent with the provisions of General Municipal Law Article 11-A.

Section 155.13 provides the termination of State administration of a defined benefit volunteer firefighter service award program.

Section 155.14 provides procedure for a local government Sponsor to notify the Administrator of any amendment or termination of a State-administered defined benefit volunteer firefighter service award program and specifies the information required to be included in such notice.

Section 155.15 provides for the Comptroller to serve as Administrator of State-administered service award programs or to retain an administrative service agency or a financial organization to administer all or any part of a service award program, and specifies the duties of the Administrator.

Section 155.16 provides for the Comptroller to appoint a Program Actuary to determine the amounts that each Sponsor must contribute to defray the costs of operating a State-administered defined benefit volunteer firefighter service award program, including the distribution of service award benefits and all administrative, actuarial, and investment service expenses.

Section 155.17 provides for the Comptroller to designate himself or herself as Program Trustee or to contract with an administrative service agency or a financial services agency to serve as Program Trustee for the purpose of holding and investing program assets.

Section 155.18 makes the Administrator responsible for the preparation of a program document setting forth the rights and obligations of Sponsors and participants and the procedures for administration of State-administered defined benefit volunteer firefighter service award programs.

Section 155.19 requires the Administrator to make reports to each Sponsor and to issue confidential account statements for each participant.

Section 155.20 provides for disclosure of a State-administered defined benefit volunteer firefighter service award program summary, and any modifications thereto, to each participant.

Section 155.21 sets forth the standards to be followed in the selection of administrative service agencies or financial organizations to act as service providers.

Section 155.22 requires a service provider to observe a fiduciary standard of care.

Section 155.23 prohibits service providers from using participant information to solicit or offer to participants in a State-administered defined benefit volunteer firefighter service award program any other product or service.

Section 155.24 specifies optional forms of payment of defined benefit service awards.

Text of proposed rule and any required statements and analyses may be obtained from: William J. Murray, Office of the State Comptroller, 110 State St., 14th Fl., Albany, NY 12236-0001, (518) 474-9024, e-mail: bmurray@osc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

Chapter 714 of the Laws of 2006 amended Article 11-A of the General Municipal Law to authorize the establishment of an optional State-administered volunteer firefighter service award program. General Municipal Law sections 214, 215, 216, 216-a, 216-b, 216-c, 217, 217-a, and 219-a generally apply to such service award programs, and General Municipal Law section 219 specifically applies to defined benefit volunteer firefighter service award programs. General Municipal Law section 216-c[3] requires the Comptroller to promulgate rules and regulations governing State-administered volunteer firefighter service award programs, including, but not limited to, standards for the selection of service providers, the method and timing of the payments required to be made by the sponsors, reporting requirements, matters relating to the preparation of a plan document, application procedures for transfer into the State-administered program, and any other matter relating to the service award programs. Section 13 of Chapter 714 provided for the State-administered volunteer firefighter service award program to be effective as of June 1, 2007, and authorized the Comptroller to adopt the necessary rules and regulations on or before that date.

2. Legislative Objectives:

The regulations contained in this Part provide for the establishment and operation of an optional State-administered defined benefit volunteer firefighter service award program, including the creation of new State-administered defined benefit volunteer firefighter service award programs

by local sponsors and the conversion of locally-administered defined benefit volunteer firefighter service award programs into State-administered programs. Regulations in a separate Part cover State-administered defined contribution volunteer firefighter service award programs.

3. Needs and Benefits:

The adoption of Part 155 will make it possible for local sponsors to choose to have defined benefit volunteer firefighter service award programs administered by the State.

4. Costs:

a. The major cost of the proposed rule to local governments that sponsor State-administered service award programs would be the fees charged by service providers retained by the Comptroller, through a competitive process, to serve as program Administrator, Program Actuary, and trustee. Because these fees will be determined in future contracts entered into between the Comptroller and the service providers, the fees are currently indeterminate. Due to economies of scale, however, it is anticipated that the fees provided for in such contracts will be less than the fees for comparable services paid by the sponsors of locally-administered service award programs.

b. Costs to the agency and the State for the implementation and continuation of the rule are significant but indeterminate. The local sponsors will continue to be responsible for all the costs of operating and administering the programs, including the costs of administrative, actuarial, and investment services. Costs to local governments that sponsor defined benefit volunteer firefighter service award programs and transfer the responsibilities to the State are expected to eventually be less than current costs, since economies of scale should be realized as the number of State-administered programs increases.

c. The basis for the foregoing cost estimates is an analysis of the proposed regulations and the experience of the Office of the State Comptroller in supervising the accounts of political subdivisions of the State.

5. Local Government Mandates:

The rule requires local governments that establish new State-administered defined benefit volunteer firefighter service award programs or transfer existing locally-administered programs to State administration to follow prescribed procedures. The cost of financing existing obligations of a locally-administered service award program must be paid to the Comptroller when administrative responsibility is transferred to the State.

6. Paperwork:

Local governments seeking to establish new State-administered defined benefit volunteer firefighter service award programs or to transfer existing locally-administered programs to State administration are required to file a Notice of Adoption or Transfer with the Comptroller, to sign an Adoption or Transfer Agreement, and to periodically report the names, addresses, and other information relating to the volunteer firefighters who participate in the programs, and such other information as may be needed for the administration of the programs.

7. Duplication:

None.

8. Alternatives:

No significant alternatives were considered.

9. Federal Standards:

None.

10. Compliance Schedule:

None. Local government sponsors are authorized, but not required, to have service award programs administered through the Comptroller's office.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule sets forth the requirements for adopting a State-administered defined benefit volunteer firefighter service award program or for transferring administrative responsibility to the State for an existing locally-administered defined benefit volunteer firefighter service award program. Small businesses will not be affected by adoption of the rule.

2. Compliance requirements:

None. Local government sponsors are authorized, but not required, to have service award programs administered through the Comptroller's office.

3. Professional services:

Notices of adoption or transfer and notices of amendment or termination must include an opinion of legal counsel assuring that the local government Sponsor has conducted the necessary proceedings and complied with the applicable laws and regulations.

4. Compliance costs:

The rule imposes no initial capital costs. The cost of obtaining required legal opinions will vary, depending on whether opinions are obtained from in-house or outside counsel. For local governments using outside counsel, the cost will vary according to the complexity of the defined benefit volunteer firefighter service award program which is the subject of the legal opinion. For an existing program, legal counsel will have to analyze the existing records, and costs will vary depending on the state of the records and the counsel's billing rate. The cost of financing existing obligations of a locally-administered service award program must be paid to the Comptroller when administrative responsibility is transferred to the State.

5. Economic and technological feasibility:

The rule imposes no technological requirements, and the economic feasibility of financing a defined benefit volunteer firefighter service award program depends upon the strength of a local government's revenue base, which is not affected by the rule.

6. Minimizing adverse impact:

Since the rule imposes no adverse impacts beyond the burdens that are already implicit in the establishment of a statutorily authorized service award program, no approaches for minimizing adverse impacts were considered.

7. Small business and local government participation:

Notice of the rule has been disseminated to statewide fire service organizations and posted on the agency's website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to every rural area in the State.

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

The rule requires all local government sponsors of State-administered defined benefit volunteer firefighter service award programs, including those in rural areas, to keep records of the services rendered by volunteer firefighters, to report information to the State administrator, and to comply with the payment and other requirements of the program. At the time of commencing or terminating participation in a State-administered defined benefit volunteer firefighter service award program, local government sponsors, including those in rural areas, must obtain a legal opinion assuring that all necessary legal proceedings have been conducted and that the sponsor has complied with applicable laws and regulations.

3. Costs:

Costs for local government sponsors in rural areas will vary depending on the size of the affected volunteer fire company or volunteer fire department, the number of participating members, and the length of time a defined benefit volunteer firefighter service award program has been in existence.

4. Minimizing adverse impact:

Since the rule imposes no adverse impacts beyond the burdens that are already implicit in the establishment of a statutorily authorized service award program, no approaches for minimizing adverse impacts were considered.

5. Rural area participation:

Notice of the rule has been disseminated to statewide fire service organizations and posted on the agency's website.

Office of Children and Family Services

NOTICE OF ADOPTION

Mother/Baby Facility

I.D. No. CFS-52-06-00012-A

Filing No. 257

Filing date: March 6, 2007

Effective date: March 21, 2007

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

Action taken: Amendment of section 442.25 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 462(1)

Subject: Regulatory standards for the operation of a mother/baby facility.

Purpose: To grant to the Office of Children and Family Services the authority to grant to authorized agencies an exception to the regulatory standards for the operation of mother/baby facilities in accordance with 18 NYCRR 442.17. In order for an authorized agency to receive an exception, the authorized agency must make a written request to the Office of Children and Family Services. The authorized agency must demonstrate that the residential program is in substantial compliance with the regulations of the Office of Children and Family Services in regard to the operation of a child care institution, with the exception of the standards that are the subject to the request for the exception. The authorized agency must also demonstrate that the granting of the exception will not create any hazardous conditions which could impact the health or safety of children in the residential program. The Office of Children and Family Services may impose on the requesting authorized agency alternative requirements the Office of Children and Family Services considers necessary for the protection of the health or safety of the children.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-52-06-00012-P, Issue of December 27, 2006.

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

Text of rule and any required statements and analyses may be obtained from: 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.

CVB Claim Number
hereby authorize:

Name of Representative

Address of Representative

Phone Number of Representative

to act as my representative in the above mentioned CVB claim. This authorization is to allow the New York State Crime Victims Board to share my information and records compiled for this claim with the above authorized representative. This authorization shall be valid until revoked by me in writing.

Signature of CVB Claimant

Date
State of New York)

County of) ss.:
_____)

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Subdivision (a) of section 525.7 is amended to read as follows:
525.7 Representation by attorney.

(a) Parties have the right to be represented before the board or any member thereof, at all stages of a proceeding, by an attorney-at-law duly licensed to practice in the State of New York and/or before the Appellate Division upon judicial review of the board's final decision. *Parties shall provide to the Board an authorization compliant with subdivision (l) of section 525.1 of this part.*

Text of proposed rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Crime Victims Board, 845 Central Ave., Suite 107, Albany, NY 12206, (518) 457-8066, e-mail: johnwatson@cvb.state.ny.us

Data, views or arguments may be submitted to: John Watson, General Counsel, Crime Victims Board, 845 Central Ave., Suite 107, Albany, NY 12206, (518) 457-8066, e-mail: johnwatson@cvb.state.ny.us

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with the State Administrative Procedure Act section 102(11)(b), it implements or confirms to non-discretionary statutory provisions. Subdivision (6) of section 621 of the Executive Law defines "Representative" of a Crime Victims Board claimant. Section 633 of the Executive Law requires the New York State Crime Victims Board's records relating to a claim submitted by a victim or claimant, shall be deemed confidential with limited exceptions. One such exception (Executive Law, section 633(1)(c)) is when requests for information are made by the victim, claimant or their authorized representative.

Furthermore, under the Personal Privacy Protection Law, subdivision (1) of section 96 of the Public Officers Law designates how the disclosure of any record or personal information can be made by an agency. Section 96 requires that, "(1) No agency may disclose any record or personal information unless such disclosure is: (a) pursuant to a written request by or the voluntary written consent of the data subject, provided that such request or consent by its terms limits and specifically describes: (i) the personal information which is requested to be disclosed; (ii) the person or entity to whom such personal information is requested to be disclosed; and (iii) the uses which will be made of such personal information by the person or entity receiving it;"

Pursuant to the aforementioned statutory authority, the proposed rule would amend section 525.1 of Title 9 NYCRR to include the definition of

Crime Victims Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Designation of a Crime Victims Board Claimant's Representative
I.D. No. CVB-12-07-00001-P

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

Proposed action: This is a consensus rule making to add section 525.1(l) and amend section 525.7(a) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 621(6) and 633; Public Officers Law, section 96

Subject: Designation of a Crime Victims Board claimant's representative.

Purpose: To ensure the New York State Crime Victims Board is in compliance with its confidentiality obligations under Executive Law, section 633 and Public Officers Law, section 96, while at the same time providing a Crime Victims Board claimant the opportunity to designate a representative.

Text of proposed rule: A new subdivision (l) is added to section 525.1 to read as follows:

(l) "Representative" shall mean one who represents or stands in the place of another person, including but not limited to an agent, an assignee, an attorney, a guardian, a committee, a conservator, a partner, a receiver, an administrator, an executor or an heir of another person, or a parent of a minor. Parties who wish to designate a representative shall provide to the Board a notarized authorization compliant with Public Officers Law, section 96 before any confidential records of, or information about a claimant can be disclosed by the Board. This authorization shall be valid unless and until revoked by the claimant in writing. The form shall be as follows:

Representative's Authorization by Crime Victims Board (CVB) Claimant

Pursuant to New York State Executive Law, § 633 and Public Officers Law § 96, I:

Name of CVB Claimant
(Please print)

claimant "representative" and the form necessary for the representative's authorization by Crime Victims Board claimant. The proposed rule would also amend subdivision (a) of section 525.7 of Title 9 NYCRR as it relates to a claimant's representation by an attorney, to require the claimant provide an authorization designating the attorney to act as their representative to the Crime Victims Board.

The proposed consensus rule is submitted by the New York State Crime Victims Board in order to ensure the New York State Crime Victims Board is in compliance with its confidentiality obligations under Executive Law, section 633 and Public Officers Law, section 96, while at the same time providing a Crime Victims Board claimant the opportunity to designate a representative.

Job Impact Statement

The New York State Crime Victims Board projects no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of this rule. The rule simply ensures the New York State Crime Victims Board is in compliance with its confidentiality obligations under Executive Law, section 633 and Public Officers Law, section 96, while at the same time providing a Crime Victims Board claimant the opportunity to designate a representative. There will be no change in the number of agency employees as a result of these regulations. Nothing in the proposed regulations will increase or decrease the number of jobs in New York State, have an adverse impact on specific regions in New York State or negatively impact jobs in New York State.

Education Department

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Special Education Programs and Services

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

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

Proposed action: Amendment of sections 100.2, 120.6, 200.1, 200.9, 200.13, 200.14, 200.16, 201.2 and 201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 3208 (1-5), 3209(7), 3214(3), 3602-c(2), 2713(1) and (2), 4002(1-3), 4308(3), 4355(3), 4401(1-11), 4402(1-7), 4403(3), 4404(1-5), 4404-a(1-7) and 4410(13)

Subject: Special education programs and services.

Purpose: To conform the commissioner's regulations to the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 *et seq.*), as amended by Public Law 108-466, and the final amendments to 34 CFR part 300; ensure consistency in procedural safeguards; promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities.

Public hearing(s) will be held at: 3:00 p.m.-6:00 p.m., April 16, 2007 at Adam Clayton Powell Jr. State Office Bldg., 163 W. 125th St., 2nd Fl., Art Gallery, New York, NY; 3:00 p.m.-6:00 p.m., April 19, 2007 at the Clarion Hotel of Albany, 3 Watervliet Ave. Ext., Albany, NY; and 3:00 p.m.-6:00 p.m., April 23, 2007 at Classics V, 2425 Niagara Falls Blvd., Amherst, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.vesid.nysed.gov/specialed/idea/home.html): The Commissioner of Education proposes to amend sections 100.2(ii), 102.6(a), 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.8, 200.9, 200.13, 200.14, 200.16, 201.2, 201.3, 201.4, 201.5, 201.6, 201.7, 201.8, 201.9, 201.10, and 201.11 of the Commissioner's Regulations, effective July 19, 2007, relating to the provision of special education to students with disabilities. The following is a summary of the substance of the proposed amendments.

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

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

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

Section 200.2, as amended, makes technical changes and corrects cross citations and incorporations by reference relating to board of education written policies and procedures, responsibilities of boards of cooperative education services, and maintenance of impartial hearing officer (IHO) lists; requires consent for release of information about nonpublic school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to referral for special education; and requires districts to publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

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

Section 200.4, as amended, makes technical amendments and corrects cross citations relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after July 1, 2008 be on a form prescribed by the Commissioner of Education; and adds additional procedures for identifying students with learning disabilities.

Section 200.5, as amended, corrects cross citations relating to other required notifications, consent for release of information, and impartial hearing timelines; corrects incorporations by reference relating to parent participation in CSE meetings and confidentiality of personally identifiable data; makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations, mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective July 1, 2008, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner of Education; adds that no hearing decisions will be issued on agreements made by the involved parties; and adds that only one 30-day extension to an impartial hearing may be granted at a time.

Section 200.6, as amended, makes certain technical changes relating to the continuum of services; adds that the CSE may recommend that a student who needs both resource room services and direct consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" to the continuum of services.

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

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

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

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

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

Section 200.16, as amended, corrects cross citations relating to referral and the continuum of services for preschool students; conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs in New York City to temporarily

increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations to carry out State laws regarding education.

Education Law section 3208(1-5) provides for attendance and student mental/physical examination requirements.

Education Law section 3209(7) authorizes the Commissioner to promulgate regulations regarding homeless youth.

Education Law section 3214(3) establishes requirements for discipline of students with disabilities and students presumed to have a disability.

Education Law section 3602-c(2) establishes district responsibilities for provision of special education services to students enrolled in nonpublic schools.

Education Law section 3713(1) and (2) authorizes the State and districts to accept federal law making appropriations for education.

Education Law section 4002 establishes responsibilities for education of students in child-care institutions.

Education Law sections 4308(3) and 4355(3) authorizes Commissioner's regulations regarding admission to the State School for the Blind and State School for the Deaf.

Education Law section 4401 authorizes Commissioner to approve private day and residential programs serving students with disabilities.

Education Law section 4402 establishes district's duties regarding education of students with disabilities.

Education Law section 4403 outlines Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in their best interests.

Education Law section 4404 establishes appeal procedures for students with disabilities.

Education Law section 4404-a establishes mediation programs for students with disabilities.

Education Law section 4410 outlines special education services and programs for preschool children with disabilities. Section 4410(3) authorizes Commissioner to adopt regulations.

LEGISLATIVE OBJECTIVES:

The amendments carry out the legislative objectives in the aforementioned statutes to ensure that students with disabilities are provided a free appropriate public education consistent with federal law and regulations.

NEEDS AND BENEFITS:

The amendments are necessary to conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006. The amendments are also necessary to ensure consistency in procedural safeguards; promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities.

COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in the IDEA statutes and regulations; ensure consistency in procedural safeguards; to promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities and do not impose any additional costs beyond those imposed by federal and State statutes and regulations.

LOCAL GOVERNMENT MANDATES:

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

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

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

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

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

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after July 1, 2008 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations, mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective July 1, 2008, that prior written notice (notice of recommendation) and

meeting notices be on forms prescribed by the Commissioner; adds that no hearing decisions will be issued on agreements made by the involved parties; and adds that only one 30-day extension to an impartial hearing may be granted at a time.

Section 200.6 makes technical changes regarding continuum of services; provides the CSE may recommend that a student who needs both resource room services and direct consultant teacher services, may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" to the continuum of services.

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

Section 200.16 conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs in New York City to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

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

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

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

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

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

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

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

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

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

PAPERWORK:

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

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

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

Services, or a preadmission certification committee established pursuant to Mental Hygiene Law section 9.51(d).

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

DUPLICATION:

The amendments will not duplicate, overlap or conflict with any other State or federal statute or regulation.

ALTERNATIVES:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the federal IDEA statutes and regulations and to State statute and to that extent there were no significant alternatives and none were considered.

Various alternatives for establishing the staff-to-student ratio in the integrated co-teaching class option were considered, including only establishing a ratio of students with disabilities to nondisabled students, but the current proposal was selected to ensure reasonable class size. With regard to minimum levels of service requirements, the Department considered the repeal of minimum levels established for speech and language services, consultant teacher services and resource room services. The proposed amendment was selected because it is expected to maximize the participation of students with disabilities in general education classes and curriculum; will allow more students with disabilities to receive special education services without removing students from their required academic courses; and yield a more efficient and effective use of human and fiscal resources.

The Department also considered proposals to allow indirect support to be provided by related service providers; to repeal the chronological age-range limitations in middle- and secondary-level special classes; and to repeal the requirement for parent notification relating to math and reading achievement levels in special classes. The proposed amendment addresses recommendations most supported by public comment and most directly related to improved results for students with disabilities and placement in the least restrictive environment.

FEDERAL STANDARDS:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the federal IDEA statutes and regulations (20 U.S.C. 1400 *et seq.*, as amended by Public Law 108-446, and the final federal amendments to 34 CFR Part 300) and to that extent do not exceed any minimum federal standards. The amendments relating to evaluation and placement of preschool students; standardized forms for IEPs, written notifications and meeting notices; minimal levels of services for resource room and direct consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of New York City approved preschool programs are not required by federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the amendments by their effective date.

Regulatory Flexibility Analysis

EFFECT OF RULE:

Small Businesses:

The proposed amendments are necessary in order to ensure compliance with federal law and regulations relating to the education of students with disabilities, ages 3-21; to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and do 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 rule that it does not affect small businesses, no affirmative steps 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:

The proposed amendments apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State.

COMPLIANCE REQUIREMENTS:

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

ance requirements upon local governments beyond those imposed by federal statutes and regulations.

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

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

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

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

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

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after July 1, 2008 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations, mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective July 1, 2008, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds that no hearing decisions will be issued on agreements made by the involved parties; and adds that only one 30-day extension to an impartial hearing may be granted at a time.

Section 200.6 makes technical changes regarding continuum of services; provides the CSE may recommend that a student who needs both resource room services and direct consultant teacher services, may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" to the continuum of services.

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

Section 200.16 conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs in New York City to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

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

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

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

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

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

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

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

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

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

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

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

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

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

PROFESSIONAL SERVICES:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes to the IDEA and recent amendments to 34 CFR Part 300, and do not impose any additional professional service requirements on local governments beyond those imposed by such federal statutes and regulations and State statutes.

COMPLIANCE COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in the IDEA statutes and regulations; ensure consistency in procedural safeguards; to promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities. School districts and other local educational agencies (LEAs) are required to comply with the IDEA as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendments do not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

MINIMIZING ADVERSE IMPACT:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the federal IDEA statutes and regulations (20 U.S.C. 1400 *et seq.*, as amended by Public Law 108-446, and the final federal amendments to 34 CFR Part 300) and to that extent do

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

School districts and other LEAs are required to comply with IDEA as a condition to their receipt of federal funding. The proposed conforming amendments have been carefully drafted to meet federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes.

Various alternatives for establishing the staff-to-student ratio in the integrated co-teaching class option were considered, including only establishing a ratio of students with disabilities to nondisabled students, but the current proposal was selected to ensure reasonable class size. With regard to minimum levels of service requirements, the Department considered the repeal of minimum levels established for speech and language services, consultant teacher services and resource room services. The proposed amendment was selected because it is expected to maximize the participation of students with disabilities in general education classes and curriculum; will allow more students with disabilities to receive special education services without removing students from their required academic courses; and yield a more efficient and effective use of human and fiscal resources.

The Department also considered proposals to allow indirect support to be provided by related service providers; to repeal the chronological age-range limitations in middle- and secondary-level special classes; and to repeal the requirement for parent notification relating to math and reading achievement levels in special classes. The proposed amendment addresses recommendations most supported by public comment and most directly related to improved results for students with disabilities and placement in the least restrictive environment.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendments have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. The State Education Department will be conducting public hearings on the proposed amendments on April 16, 19, and 23, 2007.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendments will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools 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 population density of 150 per square miles or less.

REPORTING, RECORD KEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

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

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

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

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

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

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

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after July 1, 2008 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations, mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective July 1, 2008, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds that no hearing decisions will be issued on agreements made by the involved parties; and adds that only one 30-day extension to an impartial hearing may be granted at a time.

Section 200.6 makes technical changes regarding continuum of services; provides the CSE may recommend that a student who needs both resource room services and direct consultant teacher services, may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" to the continuum of services.

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

Section 200.16 conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs in New York City to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

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

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

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

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

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

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

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

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

Section 201.11 conforms procedures for expedited hearings and timelines for an expedited hearing consistent with federal regulations; clarifies that an IHO appointment for an expedited hearing must be made in accor-

dance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

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

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

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

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

The amendments do not impose any additional professional service requirements on rural areas, beyond those imposed by such federal statutes and regulations and State statutes.

COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to the IDEA statutes and regulations; to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities. School districts and other local educational agencies (LEAs) are required to comply with the IDEA as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

MINIMIZING ADVERSE IMPACT:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the federal IDEA statutes and regulations (20 U.S.C. 1400 *et seq.*, as amended by Public Law 108-446, and the final federal amendments to 34 CFR Part 300) and to that extent do not exceed any minimum federal standards. The amendments relating to evaluation and placement of preschool students; standardized forms for IEPs, written notifications and meeting notices; minimal levels of services for resource room and direct consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of New York City approved preschool programs are not required by federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with federal standards.

School districts and other LEAs are required to comply with IDEA as a condition to their receipt of federal funding. The proposed conforming amendments have been carefully drafted to meet federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

Various alternatives for establishing the staff-to-student ratio in the integrated co-teaching class option were considered, including only establishing a ratio of students with disabilities to nondisabled students, but the

current proposal was selected to ensure reasonable class size. With regard to minimum levels of service requirements, the Department considered the repeal of minimum levels established for speech and language services, consultant teacher services and resource room services. The proposed amendment was selected because it is expected to maximize the participation of students with disabilities in general education classes and curriculum; will allow more students with disabilities to receive special education services without removing students from their required academic courses; and yield a more efficient and effective use of human and fiscal resources.

The Department also considered proposals to allow indirect support to be provided by related service providers; to repeal the chronological age-range limitations in middle- and secondary-level special classes; and to repeal the requirement for parent notification relating to math and reading achievement levels in special classes. The proposed amendment addresses recommendations most supported by public comment and most directly related to improved results for students with disabilities and placement in the least restrictive environment.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department's Rural Education Advisory Committee that includes representatives of school districts in rural areas. The State Education Department will be conducting public hearings on the proposed amendments on April 16, 19, and 23, 2007.

Job Impact Statement

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

Department of Health

NOTICE OF ADOPTION

Licensure and Practice of Nursing Home Administration

I.D. No. HLT-39-06-00004-A

Filing No. 258

Filing date: March 6, 2007

Effective date: March 21, 2007

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

Action taken: Amendment of Part 96 of Title 10 NYCRR.

Statutory authority: Public Health Law, art. 28-D, section 2896(b)(1)

Subject: Licensure and practice of nursing home administration.

Purpose: To refine and streamline the existing regulations and ensure their consistency with the policies and directives of the Board of Examiners of Nursing Home Administrators.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-39-06-00004-P, Issue of Sept. 27, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Public Employee Occupational Safety and Health Standards

I.D. No. LAB-46-06-00001-A

Filing No. 261

Filing date: March 2, 2007

Effective date: March 21, 2007

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

Action taken: Amendment of Part 56 of Title 12 NYCRR.

Statutory authority: Labor Law, art. 30, section 906

Subject: Protection of the public health and safety relating to the handling of asbestos.

Purpose: To incorporate Federal standards by reference and correct typographical errors.

Text of final rule:

Title 12 NYCRR Part 56

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SUBPART 56-6 PHASE [1]B: BACKGROUND AIR SAMPLING

Repeal 56-5.1(f)(1) and add new 56-5.1(f)(1)

(1) The asbestos survey shall, at a minimum, identify and assess with due diligence, the locations, quantities, friability and conditions of all types of installations at the affected portion of the building/structure relative to the ACM, suspect miscellaneous ACM, PACM or asbestos material contained therein. The following list is not inclusive of all types of ACMs, it only summarizes typical ACMs. The certified asbestos inspector is responsible for identification and assessment of all types of ACM, PACM, suspect miscellaneous ACM and asbestos material within the affected portion of the building/structure:

(i) PACM

(a) Surfacing Treatments:

- (1) Fireproofing;
- (2) Acoustical Plaster;
- (3) Finish Plasters; and
- (4) Skim Coats of Joint Compound.

(b) Thermal System Insulation:

- (1) Equipment Insulation;
- (2) Boiler, Breeching, Duct, or Tank Insulation, Cement or Mortar Used for Boilers and Refractory Brick; and
- (3) Piping and Fitting Insulations including but not limited to, Wrapped Paper, Aircell, Millboard, Rope, Cork, Preformed Plaster, Job Molded Plaster and coverings over fibrous glass insulation.

(ii) SUSPECT MISCELLANEOUS ACM

(a) Roofing and Siding Miscellaneous Materials:

- (1) Insulation Board;
- (2) Vapor Barriers;
- (3) Coatings;
- (4) Non-Metallic or Non-Wood Roof Decking;
- (5) Felts;
- (6) Cementitious Board (Transite);
- (7) Flashing;
- (8) Shingles; and
- (9) Gypsum.

(b) Other Miscellaneous Materials:

- (1) Dust and Debris;
- (2) Floor Tile;
- (3) Cove Base;
- (4) Floor Leveler Compound;
- (5) Ceiling Tile;
- (6) Vermiculite Insulation;
- (7) Gaskets, Seals, Sealants (including for condensate control);
- (8) Vibration Isolators;
- (9) Laboratory Tables and Hoods;
- (10) Chalkboards;
- (11) Pipe Penetration Packing or Other Firestopping Materials;
- (12) Cementitious Pipe (Transite);
- (13) Cementitious Board (Transite);

- (14) Electrical Wire Insulation;
- (15) Fire Curtains;
- (16) Fire Blankets;
- (17) Fire Doors;
- (18) Brakes and Clutches;
- (19) Mastics, Adhesives and Glues;
- (20) Caulks;
- (21) Sheet Flooring (Linoleum);
- (22) Wallpaper;
- (23) Drywall;
- (24) Plasterboard;
- (25) Spackling/Joint Compound;
- (26) Textured Paint;
- (27) Grout;
- (28) Glazing Compound;
- (29) Terrazzo; and Boiler Rope.

SUBPART 56-6

PHASE [1] B: BACKGROUND AIR SAMPLING

56-6.2 Number and Location of Background Air Samples.

(a) Phase [1] B Background Sampling – Large Asbestos Project.

56-7.3 Asbestos Abatement Contractor Daily Project Log.

(a) Sections 7.1(d), 8.1[(c)] (b)(2), 9.2[(a2)] (b)(2) – Work Stoppage Due to High Air Results.

(d) Section 7.9[(d3)] (a)(3) – HVAC System Positive Pressurization.

(k) Sections 9.3(c), 10.4, 11.2(f), 11.3(e), 11.4(d), 11.5(c), 11.7(d), 11.8(d) – Final Inspection. To be documented by supervisor at completion of asbestos project and/or work area.

Repeal 56-7.5(d) and add new 56-7.5(d)

(d) Remote Personal Decontamination System Enclosure. If a personal decontamination system cannot be attached to the regulated abatement work area, due to available space restrictions or other building and fire code restrictions, a remote personal decontamination system enclosure may be used for limited Special Projects as per subpart 56-11, negative pressure tent enclosure work areas with glovebag only abatement, or if non-friable ACM is being removed in a manner which will not render the ACM friable. If it is found during Phase IIB, that the non-friable ACM or asbestos material will become friable during the removal process, and it is logistically possible to attach the decontamination system enclosure, abatement work must stop immediately while the remote personal decontamination system is relocated to be attached and contiguous to the regulated abatement work area. The following requirements apply for all remote personal decontamination systems:

(1) Protective Clothing. Workers shall don two (2) sets of disposable protective clothing and a supply of protective clothing shall be kept in the airlocks attached to the regulated abatement work area.

(2) Location. The remote personal decontamination system shall be constructed as close to the regulated abatement work area as physically possible. If the remote personal decontamination system must be located at the exterior of the building/structure due to space or code restrictions, it shall be constructed within fifty (50) feet of the building/structure exit used for access by the asbestos abatement contractor personnel. The decontamination unit shall be cordoned off at a distance of twenty-five (25) feet to separate it from public areas.

(3) Airlocks. At a minimum, two (2) extra airlocks as defined in Section 56-2.1 shall be constructed as per Section 56-7.5(b)(11). One shall be constructed at the entrance to the equipment room or equipment/washroom. The other extra airlock shall be constructed at the entrance to the containment or regulated abatement work area(s). These airlocks shall have lockable doorways at the entrance to the airlock from uncontaminated areas. These airlocks shall be cordoned off at a distance of twenty-five (25) feet and appropriately signed in accordance with Section 56-7.4(c). Airlocks shall not be used as a waste decontamination area and shall be kept clean and free of asbestos containing material.

(4) Designated Pathway. The walkway from the regulated abatement work area to the personal decontamination system or next regulated abatement work area shall be cordoned off and signage installed as per Section 56-7.4(c), to delineate it from public areas while in use during Phase IIA through IID.

(5) Travel Through Uncontaminated Areas. If at any time a worker must travel through an uncontaminated area to access the personal decontamination area, the worker shall HEPA-vacuum and/or wet wipe his/her outer protective clothing while in the regulated abatement work area, then proceed into the airlock, which serves as a changing area, where he/she shall remove the outer clothing and don a clean set of protective clothing. The worker may then proceed to the personal decontamination system

enclosure only along a designated pathway as described above. Travel in any other area shall not be allowed.

(6) Removal. The remote personal decontamination unit shall be removed only after satisfactory clearance air sampling results have been achieved.

56-7.11(f)(1)(ii) Tent Construction.

(a) Tents with greater than [20] *twenty (20)* square feet of floor space, [or tents] that are scheduled for gross removal of friable ACM, PACM, or asbestos material, shall be constructed of two (2) layers of six (6) mil fire-retardant plastic sheeting and shall include walls, ceiling and a floor (except for portions of walls, floors and ceilings that are the removal surface) with double-folded seams. Seams shall be duct taped airtight and then duct taped flush with the adjacent tent wall.

(b) Tents with [20 square feet or less of floor space and] no gross removal of friable ACM, PACM or asbestos material, shall be constructed of one (1) layer six (6) mil fire-retardant plastic sheeting and shall include walls, ceiling and a floor (except for portions of walls, floors and ceilings that are the removal surface) with double-folded seams. Seams shall be duct taped airtight and then duct taped flush with the adjacent tent wall.

56-11.3 Minor Asbestos Projects or *Minor Size Regulated Abatement Work Area*

(a) Air Sampling and Analysis. Air sampling and analysis on a [minor] *Minor* asbestos project or *Minor size regulated abatement work area* conducted under this Section shall be conducted in accordance with the requirements of Subpart 56-4 of this Part.

(b) Where Allowed. For asbestos projects or *regulated abatement work areas* with abatement of less than or equal to ten (10) square feet or twenty-five (25) linear feet of ACM, PACM or asbestos material, Phase II Minor asbestos project abatement procedures as per this Section may be complied with in lieu of full compliance with Sections 56-7 through 56-9. All other requirements of this Part shall apply. Minor asbestos project corrective actions shall include limited enclosure, spot repair/patching, incidental disturbance clean-up, spot removal, and spot encapsulation. All corrective actions except spot removal shall be performed using non-asbestos material. Repairs where spot removal has occurred shall also utilize non-asbestos material. The regulated abatement work area shall be established as per the requirements of Section 56-7.4.

56-11.6(b) Regulated Abatement Work Area Preparation.

(3) Decontamination System Location. The personal [and waste] decontamination system enclosures can be remote but must be within [50] *fifty (50)* feet of the building/structure entrance used by the asbestos handlers (workers), and shall be removed only after obtaining satisfactory clearance air results for the regulated abatement work area or an acceptable visual inspection has determined that the abatement is complete, as per Section 56-9.2(e).

56-11.8(b)(2) Preliminary Preparation.

(i) Exception. For exterior regulated abatement work areas with ACM, PACM or asbestos material intact, establishment of negative air systems as per Section 56-7.8, and installation of isolation barriers as per Section 7.11(b) is not required. Remote personal decontamination system enclosures are allowed for exterior regulated abatement work areas.

Final rule as compared with last published rule: Non substantive changes were made in section 56-5.1(f)(1).

Text of rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Department of Labor, Bldg., 12 State Office Campus, Rm. 509, Albany, NY 12240, (518) 457-4380, e-mail:usbdww@labor.state.ny.us

Job Impact Statement

This amendment does not affect jobs and employment opportunities but simply corrects typographical errors and incorporates by reference 29 CFR 1926 and ASTM International Standard E 1368-05, which sections are referenced in the text adopted on January 11, 2006.

Assessment of Public Comment

No comments received.

Division of the Lottery

EMERGENCY RULE MAKING

Video Lottery Gaming

I.D. No. LTR-50-06-00004-E

Filing No. 259

Filing date: March 6, 2007

Effective date: March 6, 2007

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

Action taken: Addition of Part 2836 to Title 21 NYCRR.

Statutory authority: Tax Law, 1617-a

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

Specific reasons underlying the finding of necessity: (1) The nature and location of the general welfare need:

The New York Lottery operates lottery games to fund education in New York State. It is projected that the operation of video lottery gaming in New York State may generate over \$1 billion for education annually when fully implemented. Any game delay that jeopardizes start up of video lottery gaming this fiscal year could result in a loss of approximately \$1 to \$4 million weekly in aid to education that are needed to offset anticipated shortfalls.

Since passage of the legislation in October 2001 which authorized the Division to license the operation of video lottery gaming at racetracks in New York State, the Division has worked diligently with contractors and racetrack owners to develop the game and the gaming facilities. Five facilities are now in operation. The Legislature enacted changes to the legislation in April 2005. In enacting Chapter 61 of the Laws of 2005, the Legislature found that the revenue generated from video lottery gaming to that date had not met predictions. Overall, the Legislature found that lottery revenue would be maximized by making available to the video lottery gaming facilities an increased vendor's fee and a vendor's marketing allowance. The legislation was designed to provide the necessary resources and incentives to the video lottery gaming facilities to undertake the capital, marketing and other expenditures necessary to create and sustain video lottery gaming and maximize lottery revenue to support education. These regulations are a result of that legislation and were initially issued in September 2005, almost six (6) months after passage of Chapter 61. These Emergency Regulations permit the vendor's to receive the benefits of the increased vendors fee and the vendor's marketing allowance, pending formal adoption of these regulations by the Division. The Division met with each of the current and pending vendors and operators of the video gaming facilities during the months of October and November, 2005 to solicit comments on the Emergency Regulations. While the facilities agreed to submit written comments, the regulations expired requiring a new emergency filing on December 20, 2005. The video lottery gaming facilities submitted comments in late December, 2005. Since that date, the Division has been meeting with the facility owners and operators and determining the best approach on implementing proposed and acceptable changes. The proposed regulations were published for public comment in the State Register on December 13, 2006. The Division is currently assessing the comments that were received during the public comment period which ended on February 12, 2007. Accordingly, although timing requires re-issuance of these Emergency Regulations for a sixth time, it is expected that final regulations will be adopted within sixty (60) days.

(2) Description of the cause, consequences, and expected duration of the need to file emergency rules:

The cause of the need is set forth in paragraph #1 above. The consequence of filing this emergency rulemaking is that the stated Legislative goal of Chapter 61 of the Laws of 2005 will be implemented and lottery revenue to support education will be maximized. The Division intends to file shortly a Notice of Proposed Rulemaking pursuant the State Administrative Procedure Act Section 202(4-a) to continue the normal rulemaking procedures relative to these regulations within sixty (60) days.

(3) Compliance with the requirements of § 202(1) of the State Administrative Procedure Act would be contrary to the public interest because it

would delay implementation and deprive the state of needed revenue to education.

(4) Circumstances necessitate that the public and interested parties be given less than the minimum period of 30 days for notice and comment at this time since there is insufficient time to commence a formal rulemaking process and permit such public comment period. The Division expects to commence the formal rulemaking process within sixty (60) days. Such delay would thereby result in a loss of needed aid to education. This is the earliest the regulations could have been finalized in light of the new legislation, leaving inadequate time to comply with the normal rulemaking procedure set forth in the State Administrative Procedure Act Section 202(1). Delaying the implementation of the increased vendor's fee and the providing of the marketing allowance would mean a loss in lottery revenue to aid education and frustrate the legislative intent of Chapter 61 of the Laws of 2005.

Subject: Video lottery gaming.

Purpose: To allow for the licensed operation of video lottery gaming.

Substance of emergency rule: Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the Laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and as amended further by Chapter 61 of the Laws of 2005, codified as §§ 1612 and 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks in New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

In April, 2005, Chapter 61 of the Laws of 2005 amended § 1612 of the Tax Law to provide an increase to the vendor fee to be paid to each video lottery terminal operator and also permits a marketing allowance for each such facility. These changes have necessitated a revision to the Emergency Regulations. Regulations were initially adopted on an Emergency basis in 2003. Since that date, the regulations have been renewed every 90 days. The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for principals and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. Annually, the agents will be required to submit a marketing plan for approval by the Division. The marketing plan will identify those marketing or promotion costs which may be reimbursed from the marketing allowance permitted by § 1612 of the Tax Law. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations. Since issuing the Emergency Regulations in September, 2005, the Division has met and discussed the marketing procedures with each of the existing and pending vendors and operators. Formal comments have been submitted by those facilities. The Division is in the process of responding to these comments and expects to commence the formal rulemaking within sixty (60) days.

The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

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. LTR-50-06-00004-P, Issue of December 13, 2006. The emergency rule will expire May 4, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Acting General Counsel, New York Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail:jbarker@lottery.state.ny.us

Regulatory Impact Statement

1. **Statutory Authority:** On October 31, 2001, Governor Pataki signed into law Part C of Chapter 383 of the Laws of 2001, codified as §§ 1612 and 1617-a of the New York State Tax Law, which authorizes the New York State Division of the Lottery ("Division") to license the operation of video lottery gaming at racetrack locations around the state. Chapter 383 of the Laws of 2001 has been amended by Chapter 85 of the laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and amended further by Chapter 61 of the Laws of 2005. The legislation directs the Division to promulgate regulations allowing for the licensed operation of video lottery gaming. These regulations fulfill that mandate, enabling the licensing and operation of video lottery gaming at authorized racetracks.

2. **Legislative Objectives:** These proposed regulations advance the legislative objective of raising additional revenue for education by establishing video lottery gaming and, as required by Chapter 61 of the Laws of 2005, permitted vendors to receive an increased vendor fee and a vendor marketing allowance.

3. **Needs and Benefits:** The regulations satisfy a legislative mandate directing the Division to promulgate regulations for the design, licensing and implementation of video lottery gaming. Pursuant to a Memorandum of Understanding between the Division and the Racing and Wagering Board, potential duplicative licensing requirements for the racetrack employees have been eliminated.

The regulations set forth the manner in which the regulated community will be licensed to conduct video lottery gaming. Additionally, they describe the game operation, financial operations, terminal design, the manner in which the security systems must operate, certain requirements for the physical layout of the gaming facilities, and how the marketing allowance will be disbursed. These regulations provide the regulated community with the details and guidance to effectively implement video lottery gaming in New York State.

While video lottery gaming has been held to be similar to other lottery games that the Division has successfully conducted for over thirty years, some components set it apart from those more traditional games. For example, most of the Division's current licensed agents are food and beverage retailers. Video lottery gaming requires the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key and other employees.

A Notice of Proposed Rulemaking was first published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Based on comments received during the public comment period, it was necessary to revise the proposed regulations. Emergency regulations have been promulgated since early 2004. Subsequently, the Legislature made certain additional changes to the statute authorizing video lottery gaming. By way of example, Chapter 61 of the Laws of 2005 increases the vendors fee originally promulgated and adds a new marketing allowance subject to the supervision of the Lottery.

These regulations will assist the regulated parties to fully understand and comply with all the requirements of the operation of video lottery gaming, while generating sales and revenue to aid education in the State of New York. Since issuing the Emergency Regulations in September, 2005, the Division has met and discussed the marketing procedures with each of the existing and pending vendors and operators. Formal comments have been submitted by those facilities. The Division is in the process of responding to these comments and expects to commence the formal rulemaking within sixty (60) days.

4. **Costs:** This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

According to data provided by the racetracks, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will approximate \$550 million if all eligible venues participate. Each racetrack's proposed project differs. The cost for each facility ranges from \$4 million to \$250 million. The regulations require video lottery gaming agents to equip the facility with an alternate emergency power source. It is estimated that this could cost those agents an additional \$250-\$300 per video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying

the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electrical and communication upgrades.

The racetracks will incur certain labor costs associated with operating video lottery gaming. Such gaming facilities throughout the state are expected to employ more than 4,000 people. Individual video lottery gaming agents will be employing approximately 110 to 1,200 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries ranging from \$22,000 to \$250,000. Total annual payroll for each racetrack could range from \$1.8 million to over \$10.8 million.

There are other incidental costs that will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. It is anticipated that most of these controls will be established through sufficient experienced racetrack personnel. Additional external auditing costs are expected to average approximately \$100,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

Portions of these rules and regulations identify the guidelines and requirements in relation to marketing expenses and the utilization of the legislatively provided funds. It is anticipated that the licensed video gaming facilities will take full advantage of the allowable uses of the funds which when fully implemented will create over \$70 million annually in available resources for increasing the amount of aid to education from the video gaming program. The use of the marketing allowance funds is voluntary for video gaming facilities as is participation in the video gaming program in general.

The Lottery expects to annually expend over \$110 million in gaming vendor fees in generating over \$800 million in aid to education annually from the video gaming program when fully implemented. Video gaming facilities which are not yet open, but have construction intentions, will likely expend approximately \$300 million in renovations and new construction for video gaming.

5. Local Government Mandates: No local mandates are imposed by rule upon any county, city, village, etc. The legislation permits local communities which have racetracks not expressly identified in the legislation to pass local laws authorizing video lottery gaming at racetracks in their communities, if they so choose.

6. Paperwork: The regulations require that the regulated entities complete a licensing application, including fingerprints, and to update and renew the application periodically. The application will follow a standard multi-state format used by other states that license similar gaming activities. Completion of these applications will be a new responsibility for the video lottery gaming agents, their principals, and key employees. Agents, their principals and key employees will be required to provide more detailed disclosure than they have previously been required to provide for licensure. This level of disclosure is common in other gaming states. Provisional licenses will be granted under certain circumstances, so that the licensing review process is not expected to pose a barrier to immediate entry into the business.

The regulated vendors should be familiar with these licensing forms and reporting requirements as they are similar to those required in other states where these vendors currently do business. In fact, gaming vendors routinely have regulatory compliance departments to assist in fulfillment of these requirements.

Vendors supplying goods or services not directly related to gaming must register to do business with the video lottery gaming agents. Any registered vendor may be required to be licensed as determined by the Division and if their contracts exceed certain thresholds outlined in the regulations, they will be required to undergo a full licensing procedure. In particular, non-gaming vendors will be required to submit license applications if any of the following conditions exist:

(a) the non-gaming vendor has a contract with a video lottery gaming agent that exceeds \$150,000.00 in any twelve (12) month period;

(b) the non-gaming vendor has contracts with more than one video lottery gaming agent that combined exceed \$500,000.00 in any twelve (12) month period;

Video lottery gaming agents will be required to submit business plans that will include floor plans of the gaming areas, staffing plans, internal control procedures, marketing plans, and security plans. These will need to be updated periodically.

In order to ensure the financial integrity and security of video lottery gaming, the video lottery gaming agents will be required to develop internal control procedures, to undergo an auditing process and to submit financial reports. These financial reports are produced during the regular course of business, and their submission should not prove burdensome. These will need to be updated periodically.

Finally, video lottery gaming agents are required to submit an annual marketing plan to the Division which describes the proposed use of the marketing allowance permitted by Chapter 61 of the Laws of 2005.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the New York State Racing and Wagering Board must license the operation of pari-mutuel wagering at the racetracks as well as licensing racetrack employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Division may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Division and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. Alternatives: The Division has conducted outreach sessions with each of the operating video lottery gaming facilities and believes that these regulations fulfill its statutory mandate while addressing those comments. While the majority of requests for revision were accommodated whenever feasible, the Division did not accept any requests for change that in its estimation would undermine the security and integrity of the game. All comments received are available for public review by contacting Julie B. Silverstein Barker, Acting General Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, NY 12301 or by calling 518-388-3408 or e-mailing to jbarker@lottery.state.ny.us.

As another alternative, the Division entered into a Memorandum of Understanding with the Racing and Wagering Board to avoid potential duplicative licensing requirements for the racetrack employees.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: The licenses must be issued prior to commencement of video lottery gaming. In many instances, the license applicants will be issued provisional licenses immediately upon filing their application. All requirements concerning the conduct and operation of video lottery gaming must be complied with prior to actual commencement of the games and maintained on-going throughout the operation of the games.

Regulatory Flexibility Analysis

1. Effect of Rule: The Division of the Lottery finds that the rule will not adversely affect local government. The rule will impact a number of different types of businesses:

(a) Licensed racetracks: It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102;

(b) Gaming vendors: Vendors wishing to supply gaming products and services must be licensed. These include the supplier of the central computer system that will support the video lottery games, the companies supplying the games and terminals, management companies and certain lenders. It is anticipated that, these companies will recoup any costs associated with licensing and start-up from operations;

(c) Non-gaming vendors: Most vendors supplying goods and services not directly related to gaming will be required to complete a registration process only. However, if their contract exceeds a certain value, or if the Division otherwise determines, such vendors will be required to comply with licensing provisions. While it is difficult to estimate all costs associated with doing business with a video lottery gaming agent, the costs of registration will be minimal. The costs of licensing, should that be necessary, should not exceed \$100 per application for the costs of fingerprinting.

Participation in video lottery gaming by any of these entities is voluntary and it is expected they will use good business judgment when deciding whether or not to participate in these games. It is expected there will be no adverse economic impact on any of these regulated businesses.

2. Compliance Requirements: These rules will not require small businesses to complete burdensome forms or reports. Certain small vendors may not even be required to register.

3. Professional Services: It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming operation. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

Based on forecasted estimates, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will exceed \$550 million if all eligible remaining venues participate. Each facility's proposed project differs. The cost for each facility ranges from \$4 million to over \$250 million dollars. The regulations require video lottery gaming agents equip the facility with an alternate emergency power source. It is estimated that this will cost those agents an additional \$250-\$300 per installed video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each racetrack's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The gaming facilities throughout the state are expected to employ more than 4,000 people. Individual gaming agents will be employing between approximately 110 to 1,200 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual hourly salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs which will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racetrack facilities. The majority of these controls are put in place through adequate experienced personnel and the personnel costs are set forth above. Additional external auditing costs are expected to average approximately \$100,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

5. Economic and Technological Feasibility: The economic and technological impact of these rules on local government is minimal.

There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impact: In the case of smaller, non-gaming vendor contracts, these vendors will not be required to comply with licensing and background checks.

7. Small Business and Local Government Participation: During the pre-proposal stage of the regulatory process, members of the regulated community were contacted and given the opportunity to participate in the formation of these regulations. The New York Lottery received numerous comments from members of the community, many of which were incorporated during the final drafting of the proposed regulations. These emergency regulations include revisions made to the regulations as a result of such comments.

Rural Area Flexibility Analysis

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County.

However, the Division has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Division believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

Job Impact Statement

The Division has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the agency has determined the rule will have a positive impact on jobs and employment opportunities.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ more than 4,000 people. Individual gaming agents will be employing between approximately 110 to 1,200 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs. It is expected that, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Fee Setting

I.D. No. MRD-12-07-00003-P

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

Proposed action: Amendment of sections 671.7, 679.6 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: Fee setting in home and community-based (HCBS) waiver community residential habilitation services, clinic treatment facilities, and day treatment facilities for persons with developmental disabilities.

Purpose: To establish cost of living (COLA) adjustments and trend factors applicable to these facilities and services, effective June 1, 2007.

Public hearing(s) will be held at: 10:30 a.m., May 7, 2007* at Office of Mental Retardation and Development Disabilities, 3rd Fl., Counsel's Office Conference Rm., Albany, NY; 10:30 a.m., May 8, 2007* at Office of Mental Retardation and Development Disabilities, 3rd Fl., Counsel's Office Conference Rm., Albany, NY.

*Please call OMRDD at (518) 474-1830 no later than Monday, April 30, 2007 to indicate that you intend to participate.

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

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

Text of proposed rule: Paragraph 671.7(a)(1) - Add new subparagraphs (xxvi) and (xxvii):

(xxvi) *Effective June 1, 2007, community residences are eligible for a cost of living adjustment (COLA) to be included in their final net fee. This add-on is a 2.3 percent increase to the operating portion of allowed reimbursement and is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, community residences will be reimbursed operating costs that result in a full annual COLA of 2.3 percent as if the COLA were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this adjustment, the provider is required to*

submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended.

(xxvii) Facilities initially certified on or after April 1, 2008, shall be deemed to have met the requirements for an approved COLA add-on described in subparagraph (xxvi) of this paragraph, and a corresponding factor shall be included in the final net fee.

Subparagraph 679.6(j)(1)(v) - Add new clauses (u)-(aa):

(u) Effective June 1, 2007, facilities are eligible for a cost of living adjustment (COLA) of 2.3 percent to the operating portion of allowed reimbursement. This adjustment is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, facilities will be reimbursed operating costs that result in a full annual COLA of 2.3 percent as if the COLA were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this adjustment, the provider is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended. For facilities which did not participate in the increases described in clauses (d) and (e) of this subparagraph, and which did participate in the increases in clause (j) of this paragraph, the fee with the COLA is:

	Schedule A	Schedule B
(1) Full clinic visit	\$ 57.54	\$ 94.34
(2) Comprehensive diagnostic and evaluation visit	\$ 172.62	\$ 283.02
(3) Group clinic visit (per person)	\$ 19.18	\$ 31.44

(v) Effective June 1, 2007, facilities are eligible for a cost of living adjustment (COLA) of 2.3 percent on the operating portion of allowed reimbursement. This adjustment is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, facilities will be reimbursed operating costs that result in a full annual COLA of 2.3 percent as if the COLA were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this adjustment, the provider is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended. For facilities which participated in the increases described in clause (d) of this subparagraph but did not participate in the increases described in clause (e) of this subparagraph, and which did participate in the increases in clause (j) of this paragraph, the fee with the COLA is:

	Schedule A	Schedule B
(1) Full clinic visit	\$ 58.63	\$ 95.43
(2) Comprehensive diagnostic and evaluation visit	\$ 175.88	\$ 286.28
(3) Group clinic visit (per person)	\$ 19.54	\$ 31.81

(w) Effective June 1, 2007, facilities are eligible for a cost of living adjustment (COLA) of 2.3 percent on the operating portion of allowed reimbursement. This adjustment is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, facilities will be reimbursed operating costs that result in a full annual COLA of 2.3 percent as if the COLA were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this adjustment, the provider is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended. For facilities which participated in both of the increases described in clauses (d) and (e) of this subparagraph, and which did participate in the increases in clause (j) of this paragraph, the fee with the COLA is:

	Schedule A	Schedule B
(1) Full clinic visit	\$ 58.96	\$ 95.76
(2) Comprehensive diagnostic and evaluation visit	\$ 176.87	\$ 287.27

(3) Group clinic visit (per person)	\$ 19.65	\$ 31.92
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(x) Effective June 1, 2007, facilities are eligible for a cost of living adjustment (COLA) of 2.3 percent on the operating portion of allowed reimbursement. This adjustment is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, facilities will be reimbursed operating costs that result in a full annual COLA of 2.3 percent as if the COLA were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this adjustment, the provider is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended. For facilities which did not participate in the increases described in clauses (d) and (e) of this subparagraph, and which did not participate in the increases in clause (j) of this paragraph, the fee with the COLA is:

	Schedule A	Schedule B
(1) Full clinic visit	\$ 55.95	\$ 91.72
(2) Comprehensive diagnostic and evaluation visit	\$ 167.84	\$ 275.16
(3) Group clinic visit (per person)	\$ 18.65	\$ 30.57

(y) Effective June 1, 2007, facilities are eligible for a cost of living adjustment (COLA) of 2.3 percent on the operating portion of allowed reimbursement. This adjustment is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, facilities will be reimbursed operating costs that result in a full annual COLA of 2.3 percent as if the COLA were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this adjustment, the provider is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended. For facilities which participated in the increases described in clause (d) of this subparagraph but did not participate in the increases described in clause (e) of this subparagraph, and which did not participate in the increases in clause (j) of this paragraph, the fee with the COLA is:

	Schedule A	Schedule B
(1) Full clinic visit	\$ 57.00	\$ 92.78
(2) Comprehensive diagnostic and evaluation visit	\$ 171.00	\$ 278.33
(3) Group clinic visit (per person)	\$ 19.00	\$ 30.92

(z) Effective June 1, 2007, facilities are eligible for a cost of living adjustment (COLA) of 2.3 percent on the operating portion of allowed reimbursement. This adjustment is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, facilities will be reimbursed operating costs that result in a full annual COLA of 2.3 percent as if the COLA were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this adjustment, the provider is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended. For facilities which participated in both of the increases described in clauses (d) and (e) of this subparagraph, and which did not participate in the increases in clause (j) of this paragraph, the fee with the COLA is:

	Schedule A	Schedule B
(1) Full clinic visit	\$ 57.32	\$ 93.09
(2) Comprehensive diagnostic and evaluation visit	\$ 171.96	\$ 279.28
(3) Group clinic visit (per person)	\$ 19.10	\$ 31.03

(aa) Facilities initially certified on or after April 1, 2008 shall be deemed to have met the requirements for the Letter of Attestation required in clauses (u)-(z) of this subparagraph.

Note: current clause (v)(u) is renumbered as (ab).

Subparagraph 690.7(d)(6)(iii) - add new clause (c):

(c) *Effective June 1, 2007, facilities are eligible for a trend factor of 2.3 percent to the operating portion of the fee. This trend factor is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. From June 1, 2007 to March 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 2.3 percent as if the trend factor were reimbursed from April 1, 2007 through March 31, 2008. In order to receive this trend factor, the provider is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the trend factor monies are expended. Facilities initially certified on or after April 1, 2008 shall be deemed to have met the requirements for the Letter of Attestation required by this clause.*

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

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

Public comment will be received until: 5 days after the last scheduled public hearing required by statute.

Regulatory Impact Statement

1. Statutory authority:

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

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

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The enactment of these proposed amendments will ensure the funding to voluntary agency providers of the following services:

a. Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7).

b. Clinic Treatment Facilities (amendments to section 679.6).

c. Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7).

This funding is necessary in order to enable voluntary agencies that operate the above facilities to maintain services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and developmental disabilities.

3. Needs and benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities. The proposed amendments are concerned with establishing the respective cost of living (COLA) adjustments and trend factors applicable to these facilities and services, effective June 1, 2007.

4. Costs:

a. Costs to the Agency and to the State and its local governments. The aggregate cost of the application of the COLAs and trend factors contained in the proposed amendments is approximately \$2.3 million. This represents approximately \$1.15 million in State funds and \$1.15 million in federal funds.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, for the current State fiscal year, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

The specific impacts by facility or program type are as follows:

For Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which

are providing services to approximately 650 persons as of December 2006. The amendments implement a COLA of 2.3 percent on the operating portion of allowed reimbursement for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. OMRDD anticipates that all eligible providers will avail themselves of this increase. The estimated total cost for implementation of this COLA on an aggregate annualized basis is approximately \$666,000 for the period beginning April 1, 2007. This represents approximately \$333,000 in State share and \$333,000 in federal funds. There are no costs to local governments as a result of the amendments.

For Clinic Treatment Facilities (amendments to section 679.6). As of December 2006, OMRDD certified Clinic Treatment facilities were providing services to approximately 36,000 individuals statewide. The proposed amendments establish fee schedules which include a COLA of 2.3 percent on the operating portion of allowed reimbursement for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. OMRDD anticipates that all eligible providers will avail themselves of this increase. The estimated total cost for implementation of this COLA on an aggregate annualized basis is approximately \$1.02 million for the period beginning April 1, 2007. This represents approximately \$512,000 in State share and \$512,000 in federal funds. There are no costs to local governments as a result of the amendments.

For Day Treatment facilities serving persons with developmental disabilities (amendments to section 690.7). As of December 2006, OMRDD certified Day Treatment facilities were serving approximately 4,125 persons statewide. The proposed amendments implement a trend factor of 2.3 percent on the operating portion of allowed reimbursement for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. OMRDD anticipates that all eligible providers will avail themselves of this increase. The aggregate cost of this trend factor for day treatment facilities is approximately \$608,000. This represents approximately \$304,000 in State share and \$304,000 in federal government funding. There will be no additional costs to local governments as a result of these trend factor amendments.

In all instances, these estimated cost impacts have been derived by applying the COLA and trend factor provisions of the proposed amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of December 2006.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The proposed amendments are necessary to maintain funding of the above cited facilities at revised levels of reimbursement in effect as of June 1, 2007. Since the amendments provide for COLA and trend factor increases to the providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

There will be some minor administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body of eligible facilities. Consistent with the requirements of Chapter 57 of the Laws of 2006, these letters are to attest that the COLA is or was used for the purposes of promoting recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. The letters must detail how the COLA or trend factor is to be or was expended.

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

6. Paperwork: As discussed above, there will be some paperwork associated with the preparation and forwarding of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these emergency/proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these COLAs and trend factors were considered.

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

10. Compliance schedule: The proposed regulations have been filed to achieve a June 1, 2007 effective date consistent with time frames set forth in the State Administrative Procedure Act (SAPA). The proposed amendments are concerned with revising the various reimbursement methodologies to implement COLA and trend factor adjustments for facilities and providers of services to persons with developmental disabilities. The amendments do not impose any significant new requirements with which regulated parties are expected to comply since similar Letter of Attestation or Board Resolution requirements have, in the past, been associated with such COLA and trend factor provisions. There will be some compliance effort associated with the preparation and forwarding of the previously discussed Letters of Attestation, but this will be more than offset by the benefits.

Regulatory Flexibility Analysis

1. Effect on small business: These regulatory amendments will apply to voluntary not-for-profit corporations that operate the following facilities and/or provide the following services for persons with developmental disabilities in New York State:

Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which were serving approximately 650 persons as of December 2006.

Clinic Treatment facilities serving persons with developmental disabilities in New York State (amendments to section 679.6). As of December 2006, OMRDD certified Clinic Treatment facilities were providing services to approximately 36,000 persons statewide.

Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7). As of December 2006, OMRDD certified Day Treatment facilities were providing services to approximately 4,125 persons statewide.

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

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements. In fact, the provisions contained in the amendments will provide for increased reimbursements to small business providers of services, due to the application of the COLAs and trend factor established by the amendments. Specific impacts of the increased funding are set forth in the accompanying Regulatory Impact Statement as costs to State and Federal government.

The increased funding in the COLA and trend factor adjustments must be used by providers for purposes related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2007 through March 31, 2008. As discussed in the Regulatory Impact Statement, there will be some minor administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body of eligible facilities. These requirements will be kept to a minimum, consistent with Chapter 57 of the Laws of 2006.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, for the current State fiscal year, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

2. Compliance requirements: There are no significant additional compliance requirements for small businesses or local governments resulting from the implementation of these amendments. For facilities which are eligible for the COLA or trend factor adjustments contained in the amendments, there will be some minor administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body eligible facilities. Chapter 57 of the Laws of 2006 requires that these letters are to attest that the COLA or trend factor is used for the purposes of promoting

recruitment and retention of staff or to respond to other critical non-personal service costs for the period of April 1, 2007 through March 31, 2008. The letters must detail how the COLA or trend factor is to be or was expended. These requirements will be kept to a minimum, consistent with Chapter 57 of the Laws of 2006.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these amendments.

5. Economic and technological feasibility: The amendments are concerned with rate/fee setting in the affected facilities or services, and only revise the reimbursement methodologies which describe the ways in which OMRDD calculates the appropriate reimbursement of such facilities and services. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: The purpose of these amendments is to allow OMRDD to reimburse providers of the referenced facilities and services at revised levels in effect as of April 1, 2007. Specifically, these amendments establish trend factor and COLA adjustments of 2.3 percent on the operating portion of allowed reimbursement of the referenced facilities or services for the period beginning April 1, 2007 through March 31, 2008. The trend factor and COLA provisions will have positive impacts resulting from increased reimbursements to the providers.

The amendments will have no fiscal impact on local governments due to the implementation of the 2.3 percent COLA and trend factor provisions. Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

7. Small business and local government participation: To the extent that information regarding provider reimbursement has been available, OMRDD has shared and discussed such information with provider representatives.

In addition, OMRDD is required to hold public hearings only on those amendments to section 671.7 as they may affect reimbursement of the room and board components of the community residence fees. OMRDD has scheduled public hearings to be held on May 7, 2007 and May 8, 2007 according to the information provided in the Notice of Proposed Rule Making.

Rural Area Flexibility Analysis and Job Impact Statement

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with providing necessary revisions to the reimbursement methodologies which OMRDD uses in determining the reimbursement of the affected developmental disabilities services or facilities. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban). The amendments themselves only increase funding for providers regardless of location. Also, the Community Residence and Day Treatment reimbursement methodologies are primarily based upon reported costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

As discussed in the Regulatory Impact Statement, there will be some minor administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body of eligible facilities. These requirements will be kept to a minimum, consistent with Chapter 57 of the Laws of 2006, and will be greatly offset by the benefits of the additional funding resulting from the trend factor and COLA increases.

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment oppor-

tunities. This finding is based on the fact that the amendments are concerned with providing revisions to the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments are primarily concerned with establishing trend factor and cost of living adjustments (COLA) to be applied within the context of reimbursement methodologies for the affected program and services. They will not have any adverse impacts. Consistent with Chapter 57 of the Laws of 2006, the trend factor and COLA increases are primarily intended to be used for expenditures related to the promotion of recruitment and retention of staff. Therefore, it is reasonable to expect that the amendments will have a positive impact on jobs or employment opportunities in New York State.

Public Service Commission

ERRATUM

A Notice of Expiration, I.D. No. PSC-07-06-00009-P pertaining to Modification of the Current Environmental Disclosure Program, was erroneously published in the March 7, 2007 issue of the *State Register*. This notice is subject to SAPA section 102(2)(a)(ii) and will not expire.

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Temporary Electric Rates by Orange and Rockland Utilities, Inc.

I.D. No. PSC-12-07-00006-EP
Filing date: March 1, 2007
Effective date: March 1, 2007

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

Action taken: The commission, on Feb. 27, 2007, decided the electric rates of Orange and Rockland Utilities, Inc. are hereby made temporary under section 114 of the Public Service Law subject to refund pending the determination of permanent electric rates in this proceeding.

Statutory authority: Public Service Law, sections 66(5), 72 and 114

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

Specific reasons underlying the finding of necessity: It is likely that Orange and Rockland customers are overpaying for electricity, such overpayments cannot be recovered unless and until rates are made temporary and subject to refund. Consequently, the delay that would result from compliance with the usual SAPA notice procedures is contrary to the public interest.

Subject: Orange and Rockland Utilities, Inc.'s electric rates should be made temporary and subject to refund at their current levels, pending the determination of permanent rates.

Purpose: To make the electric rates of Orange and Rockland Utilities, Inc. (Orange and Rockland or the company) temporary and subject to refund at their current levels.

Substance of emergency/proposed rule: The Commission on February 27, 2007 decided the electric rates of Orange and Rockland Utilities, Inc. are hereby made temporary under Section 114 of the Public Service Law subject to refund pending the determination of permanent electric rates in this proceeding.

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 May 29, 2007.

Text of rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-1433SA3)

NOTICE OF ADOPTION

Actaris Metering Systems' Dattus FM Gas Meter by KeySpan Energy Delivery

I.D. No. PSC-34-06-00015-A
Filing date: March 5, 2007
Effective date: March 5, 2007

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

Action taken: The commission, on Feb. 27, 2007, approved an application by KeySpan Energy Delivery for the use of the Dattus FM Gas Meter, manufactured by Actaris Metering Systems.

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

Subject: Approval of types of gas meters and accessories.

Purpose: To permit gas utilities in New York State to use Actaris Metering Systems, Dattus FM Gas Meter.

Substance of final rule: The Commission adopted an order approving an application by KeySpan Energy Delivery for the use of the two-inch and three-inch models of the Dattus fM2 meter line, manufactured by Actaris Metering Systems, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-G-0932SA1)

NOTICE OF ADOPTION

Purchased Power Adjustment Clause Revenues by Plattsburgh Municipal Lighting Department

I.D. No. PSC-40-06-00006-A
Filing date: March 1, 2007
Effective date: March 1, 2007

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

Action taken: The commission, on Feb. 27, 2007, adopted an order granting the petition for rehearing, in part of the order approving rate increase subject to modification issued May 24, 2006 in Case 05-E-1496 on the reconciliation of purchased power adjustment clause revenues by the Plattsburgh Municipal Lighting Department and the members of the New York Municipal Power Agency.

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

Subject: Reconciliation of purchased power adjustment clause revenues under the Plattsburgh Municipal Lighting Department and the New York Municipal Power Agency's tariffs.

Purpose: To reconcile purchased power adjustment clause revenues.

Substance of final rule: The Commission granted the petition for rehearing, in part, of the Order Approving Rate Increase Subject to Modification issued May 24, 2006 in Case 05-E-1496 on the reconciliation of Purchased Power Adjustment Clause revenues by the Plattsburgh Municipal Lighting Department and the members of the New York Municipal Power Agency, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-1496SA2)

NOTICE OF ADOPTION

Safe Transportation of Natural Gas and Liquid Petroleum

I.D. No. PSC-48-06-00002-A

Filing date: March 5, 2007

Effective date: March 5, 2007

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

Action taken: The commission, on Feb. 27, 2007, approved revisions to the regulations contained in Title 16 NYCRR Part 10, referenced material, 16 NYCRR Part 255, transmission and distribution of gas, and 16 NYCRR Part 258, transportation of liquid petroleum.

Statutory authority: Public Service Law, section 66(1)

Subject: Transportation of natural gas and other gas by pipeline and transportation of hazardous liquids by pipeline.

Purpose: To approve amendments related to the standards to be followed when using direct assessment to evaluate the corrosion risks on a pipeline, operator requirements to improve public awareness of pipeline operations and safety issues through enhanced communications with the public, and modification of operator qualification programs ensuring personnel have the appropriate training to perform covered tasks in a safe manner and that the appropriate regulatory agency is notified of significant modifications to the program.

Substance of final rule: The Commission adopted an order approving revisions to the regulations contained in Title 16 NYCRR Part 10, Referenced Material, 16 NYCRR Part 255, Transmission and Distribution of Gas, and 16 NYCRR Part 258, Transportation of Liquid Petroleum, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-1112SA1)

NOTICE OF ADOPTION

Load Aggregation Service by Niagara Mohawk Power Corporation

I.D. No. PSC-49-06-00012-A

Filing date: Feb. 28, 2007

Effective date: Feb. 28, 2007

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

Action taken: The commission, on Feb. 27, 2007, allowed a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (the company) to revise the company's Service Classification No. 11 security requirements applicable to direct customers participating in the company's daily balancing program, a limited waiver of the uniform business practices and to provide human needs customers an alternative to certifying 100% dual fuel capacity in order to participate in the company's daily balancing program, to become effective on a permanent basis.

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

Subject: Service Classification No. 11 — Load aggregation service.

Purpose: To revise the company's Service Classification No. 11 security requirements applicable to direct customers participating in the company's daily balancing program; request a limited waiver of the uniform business practices; and provide human needs customers an alternative to certifying 100 percent dual fuel capacity in order to participate in the company's daily balancing program.

Substance of final rule: The Commission allowed a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (the company) to revise the company's Service Classification No. 11 security requirements applicable to direct customers participating in the company's daily balancing program, a limited waiver of the Uniform Business Practices and to provide Human Needs Customers an alternative to certifying 100% dual fuel capacity in order to participate in the company's daily balancing program to become effective on a permanent basis.

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-1406SA1)

NOTICE OF ADOPTION

Retail Access Program by Central Hudson Gas & Electric Corporation

I.D. No. PSC-52-06-00018-A

Filing date: Feb. 28, 2007

Effective date: Feb. 28, 2007

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

Action taken: The commission, on Feb. 27, 2007, allowed a tariff filing by Central Hudson Electric & Gas Corporation to revise the capacity assignment requirements under its Retail Access Program, to become effective on a permanent basis.

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

Subject: General Information Section No. 41 — Retail Access Program — Capacity Release.

Purpose: To revise the manner in which upstream pipeline capacity is released to retail suppliers who elect to take assignment of the company's primary delivery point capacity under the company's Retail Access Program.

Substance of final rule: The Commission allowed a tariff filing by Central Hudson Electric & Gas Corporation to revise the capacity assignment requirements under its Retail Access Program, to become effective on a permanent basis.

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-1487SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Certain Real Property Located in Mount Pleasant, New York by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-12-07-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition filed by Consolidated Edison Company of New York, Inc. for approval to transfer certain real property located in the Town of Mount Pleasant, NY, to Hardscrabble Hill Development Group, L.L.C.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain real property located in Mount Pleasant, NY.

Purpose: To transfer certain real property located in Mount Pleasant, NY, from Consolidated Edison Company of New York, Inc. to Hardscrabble Hill Development Group, L.L.C.

Substance of proposed rule: The Commission is considering a request by Consolidated Edison Company of New York, Inc. (Con Edison) for authority under Section 70 of the Public Service Law to transfer certain real property located in Mount Pleasant, Westchester County, New York, to Hardscrabble Hill Development Group, L.L.C. (Hardscrabble). Hardscrabble plans to develop a residential subdivision on a tract of land which it owns in Mount Pleasant. As part of this development, an access road in close proximity to Con Edison's existing transmission line and towers was scheduled for construction. However, Con Edison and Hardscrabble decided it would be to their mutual benefit to change the location of the access road. The property is to be transferred pursuant to the property exchange agreement between Con Edison and Hardscrabble as a tax-free exchange pursuant to Section 1031 of the Internal Revenue Code of 1986. No monetary consideration will be given since it is a land for land exchange transaction. The Commission may approve, reject or modify, in whole or in part, Con Edison's request.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillinger, 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-0106SA1)

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

Submetering of Electricity by General Motors Corporation

I.D. No. PSC-12-07-00008-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by General Motors Corporation, to submeter electricity at Salina Industrial Powerpark, One General Motors Dr., Syracuse, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1) and 67(1)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of General Motors Corporation, to submeter electricity at Salina Industrial Powerpark, One General Motors Dr., Syracuse, 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 General Motors Corporation, to submeter electricity at Salina Industrial Powerpark, One General Motors Drive, Syracuse, 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. Brillinger, 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-0214SA1)

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

Submetering of Electricity by Herbert E. Hirschfeld, P.E.

I.D. No. PSC-12-07-00009-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Savoy Park, to submeter electricity at 2300 5th Ave., 15 and 45 139th St., 30 W. 141st St., 60 W. 142nd St., and 620 and 630 Lenox Ave., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Herbert E. Hirschfeld, P.E., on behalf of Savoy Park, to submeter electricity at 2300 5th Ave., 15 and 45 139th St., 30 W. 141st St., 60 W. 142nd St., and 620 and 630 Lenox Ave., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, to deny or modify, in whole or part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Savoy Park, to submeter electricity at 2300 5th Avenue, 15 and 45 139th Street, 30 West 141st Street, 60 West 142nd Street, and 620 and 630 Lenox Avenue, New York, New York.

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. Brillinger, 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-0246SA1)

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

Fixed Gas Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-12-07-00010-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 approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 9, to become effective June 1, 2007.

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

Subject: Fixed gas costs.

Purpose: To change the methodology for determining the fixed percentages used to allocate fixed and balancing service costs between Con Edison and Orange and Rockland Utilities, Inc. and establish a process to update these fixed percentages on an annual basis.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s (Con Edison's) request to change the methodology for determining the percentages used to allocate the fixed gas costs and balancing service costs between Con Edison and Orange and Rockland Utilities, Inc. and to establish a process to update the percentages on at least an annual basis. The Commission may approve, reject or modify, in whole or in part, Con Edison's request.

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

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

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

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

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

(07-G-0259SA1)

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

Fixed Gas Costs by Orange and Rockland Utilities, Inc.

I.D. No. PSC-12-07-00011-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 approve or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. (O&R) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 4, to become effective June 1, 2007.

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

Subject: Fixed gas costs.

Purpose: To change the methodology for determining the fixed percentages used to allocate fixed and balancing service costs between O&R and Consolidated Edison Company of New York, Inc. and establish a process to update these fixed percentages on an annual basis.

Substance of proposed rule: The Commission is considering Orange and Rockland Utilities, Inc.'s (O&R's) request to change the methodology for determining the percentages used to allocate the fixed gas costs and balancing service costs between O&R and Consolidated Edison Company of New York, Inc. and to establish a process to update the percentages on at least an annual basis. The Commission may approve, reject or modify, in whole or in part, O&R's request.

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

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

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

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

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

(07-G-0261SA1)

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations at SUNY College at Potsdam

I.D. No. SUN-45-06-00001-A

Filing No. 256

Filing date: March 5, 2007

Effective date: March 21, 2007

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

Action taken: Amendment of sections 567.1, 567.4 and 567.6 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic and parking regulations of the State University of New York College at Potsdam.

Purpose: To increase the allowable amount for fines for violations of certain parking and traffic regulations; increase the speed limit on a portion of Barrington Drive; add two stop intersections; and authorize the exemption of veterans attending the college from parking and registration fees.

Text or summary was published in the notice of proposed rule making, I.D. No. SUN-45-06-00001-P, Issue of November 8, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Carolyn J. Pasley, State University of New York, State University Plaza, S321, Albany, NY 12246, (518) 443-5400, e-mail: Carolyn.Pasley@suny.edu

Assessment of Public Comment

The agency received no public comment.