

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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Performance and Outcome-Based Provisions for Preventive Services

I.D. No. CFS-43-07-00013-E
Filing No. 1231
Filing date: Nov. 13, 2007
Effective date: Nov. 13, 2007

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

Action taken: Amendment of section 423.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 153-k and 409-a; L. 2007, chs. 53 and 57 (part H)

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

Specific reasons underlying the finding of necessity: To require preventive services to include performance and outcome-based provisions to promote the efficient use of state and local resources so that resources are used to achieve desired results. The regulation defines performances and outcome-based provisions and specifies the authorized fiscal consequence that may be imposed in the absence of the required provisions. The regulation also updates regulatory conditions for state reimbursement of district

expenditures to preventive services so that they are consistent with existing statutory and budgetary standards. Part H of chapter 57 of the Laws of 2007 mandates that these regulations be effective by Aug. 15, 2007.

Subject: Performance and outcome-based provisions for preventive services.

Purpose: To require preventive services to include performance and outcome-based provisions to promote the efficient use of State and local resources so that resources are used to achieve desired results.

Text of emergency rule: Section 423.5 of Title 18 NYCRR is amended to read as follows:

(a) General requirements. A social services district will be reimbursed for [75] 65 percent of the costs of mandated, *non-mandated*, and *community optional* preventive services provided pursuant to section 409-a of the *Social Services Law* [to children and their families] when the following conditions are met:

(1) [such] children and their families *receiving such preventive services* meet the client eligibility criteria as defined in sections 423.3 and 430.9 of this Title *or a community optional preventive services program approved by the Office of Children and Family Services ("OCFS") under subdivision (3) of section 409-a of the Social Services Law*;

(2) the social services district receives approval of its *county's child and family services* [multi-year service] plan pursuant to section 34-a of the *Social Services Law*;

(3) *the social services district certifies that it will not be using these funds to supplant other state and local funds and that it will not submit claims for reimbursement for the same type and level of services that the district previously provided and claimed under any contract in existence on October 1, 2002 as other than child protective, preventive, independent living, or after care services or adoption administration and services, other than adoption subsidies provided pursuant to title 9 of article 6 of the Social Services Law and implementing regulations*;

(4) *for a district to receive an increase in funding for child protective, preventive, independent living, or after care services, or adoption administration and services over the amount the district received for such services that were reimbursable in state fiscal year 2004-05:*

(i) *the amount of funds that the district expends on such services from its flexible fund for family services allocation and any flexible fund for family services funds transferred at the district's request to the title XX social services block grant must, to the extent that families are eligible therefore, be equal to or greater than the amount the district spent for such services that were reimbursed during state fiscal year 2004-05 with temporary assistance to needy families block grant funds for families eligible for emergency assistance to families and with temporary assistance to needy families block grant funds transferred to the title XX social services block grant; or*

(ii) *the district must increase the gross amount of such funds above the amount claimed for state fiscal year 2004-05, in which case, the increase in funding will only be available for 65 percent of the claims that exceed the gross amount claimed in state fiscal year 2004-05;*

(5) *beginning January 1, 2008, such preventive services, whether purchased or provided directly by the district, include performance or outcome-based provisions.*

(i) *For purposes of complying with this requirement, performance means quantifiable and verifiable interim changes in, or maintenance of, the conditions or behaviors of the target population resulting from the provision of services that indicate progress towards an outcome, and outcome means the anticipated change in, or maintenance of, conditions*

or behaviors of a targeted population as a result of the provision of services.

(ii) In the absence of the required performance or outcome-based provisions, OCFS may limit up to 100% of a district's state reimbursement for preventive services expenditures related to any increases in the amount of the district's gross claims for such expenditures that are otherwise reimbursable during state fiscal year 2007-08 and thereafter that exceed the amount of its gross claims for the period October 1, 2005 through September 30, 2006 that were claimed through March 31, 2007. However, OCFS may determine, in its discretion, not to reduce a district's reimbursement in this manner if the district is able to demonstrate, in a form and manner determined by OCFS, that the absence of the required performance or outcome-based provisions is due to extenuating circumstances beyond the district's control including, but not limited to, the inability to amend a contract for the purchase of preventive services that was in effect on April 9, 2007 that extends past January 1, 2008.

(3) The social services district expends an amount on child protective services equal to or greater than its child protective services maintenance of effort amount as published annually by the office based on expenditures and rate of child protective services reporting and indicators. In the event that the social services district does not meet its child protective services maintenance of effort amount, preventive services expenditures up to such an amount will be reimbursed as child protective services expenditures; and

(4) expenditures of the social services district are in excess of its title XX ceiling and total preventive services expenditures of such district exceed the preventive services maintenance of effort amount as specified in section 409-b of the Social Services Law unless otherwise specified in the State's annual aid to localities budget.]

(b) In-kind or indirect services and donated funds.

[(1) Up to one half of the social services district's total annual share of the cost of mandated preventive services may be met by in-kind or indirect services or by nontax levy funds, including, but not limited to, privately donated funds. However, this limitation does not apply to that amount equal to the total reimbursable preventive services expenditures, the local share of which was met by privately donated funds and subject to State reimbursement, during the State fiscal year ending March 31, 1981.

(2) A social services district's share of the costs of nonmandated preventive services provided pursuant to subdivision (2) of section 409-a of the Social Services Law or of the costs of community preventive services provided pursuant to subdivision (3) of section 409-a of the Social Services Law may be met in whole or in part by in-kind or indirect services or by nontax levy funds, including, but not limited to, privately donated funds.]

Claims for preventive services and independent living services submitted by a social services district for reimbursement may be comprised of in-kind, indirect services, and non-tax levy funds, including but not limited to privately donated funds, up to the same amount as the social services district's claims for such services during federal fiscal year 1998-99 were comprised of in-kind, indirect services and non-tax levy funds; provided, however, that up to 17½ percent of a social services district's claims for preventive services and independent living services may be comprised of privately donated funds if the percentage of its claims comprised of privately donated funds was less than 17½ percent during federal fiscal year 1998-99. Federal reimbursement of such claims shall be available only to the extent permitted by federal law or regulations.

[(c) Nonmandated preventive services. Expenditures for nonmandated preventive services shall be subject to 50 percent State reimbursement, provided that the Legislature has appropriated sufficient funds for this purpose and that these expenditures are not reimbursed through title XX of the Social Services Act.

(d) Reimbursement by the department to local social services departments for day care, homemaker, housekeeper/chore, home management, transportation, and family planning as mandated preventive services shall not exceed 30 percent of Group I and II local department's and 15 percent of Group III and IV local department's total expenditures for mandated preventive services unless adjusted by a decline in foster care days as set forth in this paragraph. Groups I, II, III and IV as defined in section 679.2 of this Title and are as follows:

(1) Group I. Social services districts having a caseload of less than 1,000 cases;

(2) Group II. Social services districts having a caseload of 1,000, but less than 5,000 cases;

(3) Group III. Social services districts having a caseload of 5,000, but less than 50,000 cases; and

(4) Group IV. Social services districts having a caseload of 50,000 cases and over. Each local social services department's percentage will be increased by one percent for every three percent decline in foster care days. Such percentage will be computed by the department annually for each Federal fiscal year, using the State fiscal year 1979-80 as a base year. This provision will become effective October 1, 1983.

(e) Reimbursement by the department to local social services departments for emergency cash, goods and shelter as preventive services shall not exceed three percent of such local department's total expenditures for mandated preventive services. Such reimbursement shall only be made for those expenditures not eligible for reimbursement under the Emergency Assistance to Needy Families with Children Program pursuant to Part 372 of this Title.]

(c) [(f)] Reimbursement by OCFS [the department] for foster care services, including casework contact requirements pursuant to section 441.21 of this Title and diligence of efforts requirements pursuant to section 430.12 of this Title may not be claimed as preventive services.

(d) [(g)] Reimbursement by OCFS [the department] for child protective services, including activities of receiving and investigating reports and monitoring shall not be claimed as preventive services.

(e) [(h)] Reimbursement by OCFS [the department] to local social services districts [departments] for preventive services expenditures shall be claimed on such forms as designated by OCFS [the department].

(f) [(i)] Notwithstanding any provision of this section, reimbursement by OCFS [the department] to local social services districts [departments] for preventive services expenditures shall not be made unless the local social services districts [departments] explore and use other available funding sources including [emergency assistance to needy families with children and] title XIX of the Social Security Act where applicable.

(g) [(j)] Notwithstanding any provision of this section, reimbursement by OCFS [the department] to local social services districts [departments] for preventive services expenditures shall not be made if OCFS [the department] determines that such local districts [departments] are over-utilizing particular forms or types of preventive services or are not providing balanced preventive services programs based on the identified needs of children and families residing in such local districts [departments].

(h) Social services districts shall prepare and submit to OCFS information about compliance with this section in a form and manner and at the times specified by OCFS.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire February 10, 2008.

Text of emergency 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

Regulatory Impact Statement

1. Statutory Authority

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out OCFS' powers and duties under the SSL.

Section 409-a of the SSL authorizes social services districts (districts) to provide preventive services to children and families under specified circumstances. Section 409-a(5)(a) of the SSL authorizes OCFS to establish regulations governing preventive services, including reimbursement limitations for such services. Section 153-k of the SSL specifies standards and conditions for state reimbursement of expenditures by districts for preventive and other child welfare services. Additional conditions for state reimbursement are set forth in the Education, Labor and Family Assistance portion of the state budget enacted for Fiscal Year 2007-2008 (Chapter 53 of the Laws of 2007) and in the state budgets enacted for prior fiscal years. The non-supplantation budgetary requirement in section 423.5(a)(3) of the regulation has been in place since April 1, 2003, and the budgetary child welfare threshold requirement in section 423.5(a)(4) of the regulation has been in place since April 1, 2005.

Part H of Chapter 57 of the Laws of 2007 ("the Act") requires that any preventive services provided pursuant to section 409-a of the SSL include performance or outcome-based provisions beginning January 1, 2008. The Act authorizes OCFS to limit, in accordance with regulations, a social services district's state reimbursement for preventive services expenditures in the absence of the required performance or outcome-based provisions. The Act also directs OCFS to grant a waiver from implementation of the required performance and outcome-based provisions under specified circumstances and to promulgate on an emergency basis no later than

August 15, 2007, any regulations necessary to implement the requirements established by the Act.

2. Legislative Objectives

The regulation carries out the intent of the statutory provisions discussed above, and in particular Part H of Chapter 57 of the Laws of 2007, by establishing rules that define the required performance and outcome-based provisions and specify the circumstances under and the manner in which OCFS may limit a district's state reimbursement in the absence of the required provisions. The regulation also carries out the intent of section 153-k of the SSL and related budget appropriation requirements by revising existing regulation to reflect the current statutory standards for state reimbursement of preventive services expenditures.

3. Needs and Benefits

The legislative requirement that preventive services include performance and outcome-based provisions is intended to promote the efficient use of state and local resources so that resources are used to achieve desired results. To effectuate this legislative intent, the regulation defines performance and outcome-based provisions and specifies the authorized fiscal consequence that may be imposed in the absence of the required provisions.

The regulation also updates regulatory conditions for state reimbursement of district expenditures for preventive services so that they are consistent with existing statutory and budgetary standards.

4. Costs

Because the amendment is necessary to implement Part H of Chapter 57 of the Laws of 2007 and other statutory standards governing state reimbursement for preventive services (SSL 153-k; Chapter 53 of the Laws of 2007), this regulatory amendment will not impose any costs on districts beyond those imposed by these laws. Technical assistance from OCFS, as required by statute, will assist local districts in meeting this statutory requirement. Additionally, based on discussions with districts, OCFS understands that many districts already include performance or outcome measures for the preventive services they provide or for which they contract, and thus many districts already satisfy the minimum standards required by statute and the implementing regulation.

There is no adverse fiscal impact to OCFS or the State related to the regulatory amendment.

5. Local Government Mandates

The requirement that social services districts include performance or outcome-based provisions in directly-provided and contracted-for preventive services and the conditions for state reimbursement implement statutory requirements and conditions. Therefore, the regulation does not impose any additional requirements on local governments.

6. Paperwork

OCFS is mandated by statute to report to the Governor and Legislature on local compliance with respect to performance or outcome-based provisions for preventive services. OCFS has developed a one-page attestation form for local districts to report on initial compliance. Subsequent reporting will be incorporated into existing district reporting procedures.

7. Duplication

This regulation does not duplicate other state or federal requirements.

8. Alternate Approaches

Part H of Chapter 57 of the Laws of 2007 requires OCFS to promulgate any regulations necessary to implement the statutory provisions. The regulation does this by defining the statutorily-required performance or outcome-based provisions for preventive services and by providing a fiscal consequence under certain circumstances if the statutory requirement is not met. Proposed definitions of performance and outcome were shared with representatives of regulated parties (commissioners and staff of local social services districts), their input was given careful consideration and appropriate suggestions were adopted in drafting the final regulation.

Insofar as the regulation codifies other existing statutory standards and conditions for state reimbursement the amendments are technical in nature and there were no significant alternatives to be considered.

9. Federal Standards

These regulations meet but do not exceed any applicable federal standards.

10. Compliance Schedule

Local districts must include performance or outcome-based provisions for preventive services by January 1, 2008. Other technical amendments to the regulation reflect existing statutory standards and conditions for state reimbursement of preventive services expenditures that are already in effect. This regulation is being filed on an emergency basis to comply with the statutory requirement that any necessary regulations be in place by August 15, 2007.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments

The regulation implements statutory requirements applicable to all social services districts (districts). Those voluntary agencies contracting with social services districts to provide preventive services also will be affected by the regulation. Currently, there are approximately 200 such agencies.

2. Compliance Requirements

As required by Part H of Chapter 57 of the Laws of 2007 (the Act), the regulation implements the statutory requirement that social services districts include performance or outcome-based provisions in preventive services. OCFS is mandated by the Act to report to the Governor and Legislature on local compliance with this requirement, and the regulation therefore directs local districts to prepare and submit information about compliance in a form and manner specified by OCFS. OCFS has developed a one-page attestation form for local districts to report on initial compliance. Subsequent reporting will be incorporated into existing district reporting procedures.

3. Professional Services

The technical assistance to be provided by OCFS will include professional services to assist local districts in complying with the statutory requirements implemented by the regulation. It is anticipated that this assistance will minimize the need for districts to incur any additional costs for professional services to comply with the regulation.

4. Compliance Costs

Because the regulation is necessary to implement Part H of Chapter 57 of the Laws of 2007 and other statutory standards governing state reimbursement for preventive services (SSL 153-k; Chapter 53 of the Laws of 2007), the regulation will not impose any costs on local social services districts beyond those imposed by these laws. Technical assistance from OCFS will assist local districts, and any private services agencies with which they contract, in meeting this statutory requirement.

5. Economic and Technological Feasibility

It is anticipated that the affected local governmental agencies (social services districts) have the economic and technological feasibility to incur performance or outcome-based provisions in preventive services.

6. Minimizing Adverse Impact

It is not anticipated that the regulation will result in an adverse impact on small businesses or local government agencies or instrumentalities. As outlined above, OCFS is offering technical assistance to affected local governmental agencies (social services districts) to assist with compliance. Consistent with State Administrative Procedure Act § 202-b(1), the regulation does not impose design standards or mandate specific types of performance or outcome-based provisions that local districts must include. The regulation also appropriately allows for exemption from fiscal consequences where compliance is not possible due to extenuating circumstances beyond the district's control. Additionally, based on discussions with districts, OCFS understands that many districts already include performance or outcome measures for the preventive services they provide or for which they contract, and thus many districts already satisfy the minimum standards required by statute and the implementing regulation.

7. Small Business and Local Government Participation

OCFS presented a workshop on the implementation of Part H of Chapter 57 of the Laws of 2007, the statutory provision that requires OCFS to develop this regulation, at the New York State Public Welfare Association's summer 2007 conference. Comments on the proposed regulation were received from workshop participants, who included commissioners and staff of local social services districts. OCFS subsequently held a telephone conference on the proposed regulation for all districts during which OCFS received input from district representatives on issues concerning compliance and the types of technical assistance needed by districts.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The regulation applies to all social services districts (districts), including the 44 districts that contain rural areas. Those voluntary agencies in rural areas contracting with social services districts to provide preventive services also will be affected by the regulation. Currently, there are approximately 84 such agencies.

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

OCFS is mandated by statute to report to the Governor and Legislature on local compliance with respect to performance or outcome-based provisions for preventive services. OCFS has developed a one-page attestation

form for local districts to report on initial compliance. Subsequent reporting will be incorporated into existing district reporting procedures.

As provided for in statute, OCFS will be offering technical assistance to local districts to assist with compliance. This technical assistance will minimize the need for additional professional services.

3. Costs:

Because the regulation is necessary to implement Part H of Chapter 57 of the Laws of 2007 and other statutory standards governing state reimbursement for preventive services (SSL 153-k; Chapter 53 of the Laws of 2007), the regulation will not impose any costs on social services districts, including those in rural areas, beyond those imposed by these laws. Technical assistance from OCFS will assist local districts and any private services agencies with which they contract in meeting this statutory requirement.

4. Minimizing adverse impact:

It is not anticipated that the regulation will result in an adverse impact on rural areas. As outlined above, OCFS is offering technical assistance to all affected local governmental agencies to assist with compliance. Consistent with State Administrative Procedure Act § 202-bb(2), the regulation does not impose input or design standards or mandate specific types of performance or outcome-based provisions that local districts must include. The regulation also appropriately allows for exemption from fiscal consequences where compliance is not possible due to extenuating circumstances beyond the district's control. Additionally, based on discussions with districts, OCFS understands that many local districts already include performance or outcome measures for the preventive services they provide or for which they contract, and thus many districts already satisfy the minimum standards required by statute and the implementing regulation.

5. Rural area participation:

OCFS presented a workshop on the implementation of Part H of Chapter 57 of the Laws of 2007, the statutory provision that requires OCFS to develop this regulation, at the New York State Public Welfare Association's summer 2007 conference. Comments on the proposed regulation were received from workshop participants, who included commissioners and staff of social services districts that contain rural areas. OCFS subsequently held a telephone conference on the proposed regulation for all districts during which OCFS received input from district representatives on issues concerning compliance and the types of technical assistance needed by districts, including those districts encompassing rural areas.

Job Impact Statement

A full job impact statement has not been prepared for the regulation. The regulation would not result in the loss of any jobs. It is apparent from the nature and purpose of the rule (implementation of statutory requirements for state reimbursement to social services districts of expenditures for preventive services) that it will not have a substantially adverse impact on jobs and employment opportunities. To the extent that social services districts expand the types of preventive services they currently provide and the private agencies with which they contract in order to comply with the statutory requirement underlying the regulation, the regulation may result in job creation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supervised Independent Living Programs

I.D. No. CFS-48-07-00008-P

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

Proposed action: Amendment of sections 427.2, 441.2 and 447.7 and addition of Part 449 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 374-b and 462(1)(a)

Subject: Supervised independent living programs (SILPS).

Purpose: To establish standards for the approval and operation of supervised independent living programs and supervised independent living units, as authorized by sections 374-b and 462 of the SSL. These programs provide a transitional experience to assist older youth in making a successful transition from foster care to self-sufficiency.

Substance of proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us): Section 427.2 (Definitions)

The proposed regulations add definitions of a supervised independent living program and a supervised independent living unit.

Section 441.2 (Definitions)

The proposed regulations amend the definition of an agency boarding home and add definitions of a supervised independent living program and a supervised independent living unit.

Sections 447.7 (Supervised Independent Living) and 447.8 (Waivers)

The proposed regulations repeal the existing regulations relating to supervised independent living programs.

Part 449 (Supervised Independent Living Programs)

The proposed regulations create a new Part dedicated exclusively to the creation, approval and operation of supervised independent living programs and supervised independent living units.

Section 449.1 (Definitions)

The proposed regulations establish definitions of: authorized agency, OCFS, supervised independent living program authorization, supervised independent living program, supervised independent living unit, supervised independent living program certification, youth and adult permanent resource.

Section 449.2 (Conditions for Application and Approval of a Supervised Independent Living Program)

The proposed regulations establish standards an authorized agency must follow to apply to the Office of Children and Family Services (OCFS) for approval to operate a supervised independent living program.

Section 449.3 (Conditions for Operation of a Supervised Independent Living Program)

The proposed regulations establish standards an authorized agency for the operation of a supervised independent living program by an authorized agency approved by OCFS. These standards include the responsibility of the authorized agency to inspect, monitor and supervise all supervised independent living units operated by the authorized agency.

The proposed regulations also establish standards for the supervision of youth cared for in supervised independent living units and the frequency and purpose of visitation of youth in such units. The proposed regulations establish reporting requirements to OCFS by the authorized agency relating to the operations of supervised independent living units.

Section 449.4 (Requirements for Each Supervised Independent Living Unit)

The proposed regulations establish personnel, physical plant and services standards; along with other conditions for participation in supervised independent living programs.

The personnel standards include criteria for background checks of prospective employees of the supervised independent living program. The physical plant standards address fire safety, sanitation and other living condition related standards. The proposed regulations establish what services must be provided by the supervised independent living program to foster children cared for in a supervised independent living unit that are intended to provide youth with opportunities to achieve positive outcomes and make successful transitions to self-sufficiency. Additional conditions relate to eligibility for a foster child to participate in a supervised independent living program, the limitations on the capacity of supervised independent living units, compliance with other State and local laws and ordinances and standards relating to the education, health and clothing needs of the foster child.

Section 449.5 (Notification of Municipality)

The proposed regulations set forth the requirement for the authorized agency to notify municipalities of plans to open supervised independent living units.

Section 449.6 (Required Documentation)

The proposed regulations establish record retention standards for supervised independent living programs. In addition, the proposed regulations establish recordkeeping standards for youth cared for in such programs.

Section 449.7 (Waivers)

The proposed regulations establish the authority and procedures for OCFS to grant waivers of regulatory standards to authorized agencies for the operation of supervised independent living programs and units.

449.8 (Discontinuance)

The proposed regulations impose a requirement on an authorized agency to give 90 days prior written notice to OCFS of the intent to discontinue a supervised independent living program.

Text of proposed 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

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

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

Regulatory Impact Statement**1. Statutory Authority**

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its duties pursuant to the provisions of the SSL.

Section 34(3) (f) of the SSL requires the Commissioner of OCFS to promulgate regulations for the administration of public assistance and care within the State.

Section 374-b of the SSL gives authorizes OCFS to promulgate regulations establishing the standards for approval and operation of supervised independent living programs.

Section 462(1)(a) of the SSL authorizes OCFS to promulgate regulations concerning standards of care and treatment and fiscal, administrative, nutritional, architectural and safety standards that apply to all facilities exercising care or custody of children.

2. Legislative Objectives

The proposed regulations would establish standards for the approval and operation of supervised independent living programs and supervised independent living units, as authorized by sections 374-b and 462 of the SSL. Chapter 160 of the Laws of 2004 added a definition of supervised independent living program in section 371(21) of the SSL to mean one or more of a type of agency boarding home operated and certified by an authorized agency in accordance with the regulations of OCFS to provide a transitional experience for older youth who, based upon their circumstances, are appropriate for transition to the level of care and supervision provided in the program. The impact of this statutory change was to enable authorized agencies that operated supervised independent living programs approved by OCFS to certify homes or apartments as supervised independent living units.

3. Needs and Benefits

Supervised independent living programs are a critical component in the continuum of care and services for older foster youth. These programs provide a transitional experience to assist older youth in making a successful transition from foster care to self-sufficiency. The proposed regulations would amend current regulatory standards set forth in 18 NYCRR Part 447 to permit authorized agencies to apply to OCFS for authorization to operate a supervised independent living program. Whether an authorized agency seeks to operate a supervised independent living program is within the discretion of the authorized agency, but if an authorized agency decides to operate such a program, it must first secure the written approval of OCFS. An authorized agency is defined in section 371(10) of the SSL and includes a social services district, a voluntary authorized agency or an Indian tribe with a State/Tribal agreement with OCFS. After receiving approval from OCFS to operate a supervised independent living program, the authorized agency may certify independent living units for occupancy by older foster youth at the certified homes or apartments.

Currently, OCFS issues operating certificates for the operation of each supervised independent living location in homes or apartments owned or leased by authorized agencies. The proposed regulations would shift such responsibility for certification of individual supervised independent living units to the authorized agency approved by OCFS to operate a supervised independent living program. Authorized agencies are presently responsible for the case planning and supervision of youth in such placements and those responsibilities will continue with the proposed regulations.

The proposed regulations would define a supervised independent living unit to mean a home or apartment certified by an authorized agency approved by OCFS to operate a supervised independent living program for the care of up to four youth and their children. Each supervised independent living unit must be located in the community separate from any of the authorized agency's other congregate dwellings. Currently, there is no separate definition of a supervised independent living unit. The current regulatory standards for supervised independent living in 18 NYCRR 447.7(b) (4) provide that no more than three youth may live in a home or apartment.

The benefit of authorized agencies operating supervised independent living programs and certifying supervised independent living units, is to facilitate expanded use of supervised independent living programs and increase the number of older youth having access to and placed in these programs.

The regulatory change would create separate sections for the application and approval process for a supervised independent living program, modeling after the regulations for approving and operating safe home networks (see 18 NYCRR Part 454).

The regulatory change would remove OCFS from being responsible for monitoring supervised independent living program units and make author-

ized agencies responsible for the inspection, monitoring and supervision of all the supervised independent living units operated by the authorized agency.

The proposed regulations would maintain most of the current standards set forth in 18 NYCRR Part 447 applicable to supervised independent living programs and agency operated boarding homes in regard to physical plant requirements.

The proposed regulations would clarify that a supervised independent living program and the social services district with case management responsibility must comply with existing standards relating to discharge planning and plan amendments for foster care youth.

The regulatory change would give OCFS, and not an authorized agency, the authority to grant waivers to standards applicable to both supervised independent living programs and supervised independent living units and would establish criteria for the granting of such waivers.

4. Costs

The programmatic requirements set forth in the proposed regulations, with the exception of section 449.4(d)(2), are consistent with current regulatory standards for operating a supervised independent living program. There are currently rates in place that have been set for the operation of supervised independent living programs based on the number of youth who occupy each supervised independent living program. The rate setting methodology takes into consideration all aspects of operating a supervised independent living program including, but not limited to, staffing, rent, food and clothing. All proposed regulatory amendments fall within the existing rates that have been set to pay for the operation of supervised independent living programs; therefore, there will be no fiscal impact on OCFS.

5. Local Government Mandates

Whether a social services district operates a supervised independent living program is within the discretion of the social services district. The proposed regulations would require a social services district proposing to operate a supervised independent living program to apply to OCFS for authorization to operate such a program. After receiving approval to operate a supervised independent living program from OCFS, the social services district would be authorized to certify individual supervised independent living program units for the care of up to four youth and their children. The proposed regulations do not mandate social services districts operate such a program.

6. Paperwork

The proposed regulations would require authorized agencies applying to OCFS for authorization to operate a supervised independent living program to include information necessary for OCFS to make a determination on such application. This information includes: a description of the need for the program, a description of the services, the population to be served, proposed staffing, a description of how units will be located and certified, a certification that all supervised independent living units will be operated in compliance with OCFS regulations. In addition, once authorized, the authorized agency would be required to maintain documentation on the following areas for each certified supervised independent living unit: personnel, physical facilities, inquiries to the Statewide Central Register of Child Abuse and Maltreatment and services provided to the youth. Authorized agencies would also be required to provide written notification to the chief executive officer of the municipality in which the authorized agency proposes to establish a supervised independent living unit, as required by section 374-b(2) of the Social Services Law.

7. Duplication

The proposed regulations do not duplicate other requirements. They will supersede requirements currently set forth in 18 NYCRR Part 447.

8. Alternative Approaches

OCFS considered maintaining the current practice of OCFS issuing operating certificates for individual supervised independent living locations but decided to pursue the approach set forth in the proposed regulations given the 2004 amendment to the Social Services Law that empowers authorized agencies to operate the independent living programs along the foster family boarding home and safe home network models.

9. Federal Standards

The proposed regulations comply with applicable federal standards.

10. Compliance Schedule

The proposed amendments will be effective upon the filing of the notice of adoption.

Regulatory Flexibility Analysis**1. Effect on Small Business and Local Governments:**

The proposed regulations will affect the 58 social services districts and the St. Regis Mohawk Tribe. Voluntary authorized agencies also will be

affected by the proposed regulations. There are approximately 111 such agencies.

2. Compliance Requirements:

Authorized agencies are not required to operate a supervised independent living program. However, if an authorized agency chooses to exercise its discretion to operate such a program, the proposed regulations would require the authorized agency submit an application to OCFS and receive approval to operate a supervised independent living program. After receiving approval from OCFS to operate a supervised independent living program, the authorized agency may certify homes or apartments as supervised independent living program units in accordance with standards established by the proposed regulations. The authorized agency would be responsible for the inspection, monitoring and supervision of all the supervised independent living units. In addition, the authorized agency would be required to maintain documentation on the following areas for each certified supervised independent living unit: personnel; physical facilities; inquiries to the Statewide Central Register of Child Abuse and Maltreatment and services provided to the youth. The authorized agency would also be required to provide written notice to the chief executive officer of the municipality in which the authorized agency is proposing to establish a supervised independent living unit, as required by section 374-b(2) of the Social Services Law.

3. Professional Requirements:

Authorized agencies are not required to operate a supervised independent living program. It is expected that those authorized agencies that presently operate such programs will not have to hire additional staff to implement the proposed regulations as they can be assigned to existing staff. If an authorized agency chooses to commence the operation of a supervised independent living program, if it is possible that it may have to hire additional staff.

4. Compliance Costs:

The programmatic requirements set forth in the proposed regulations, with the exception of section 449.4(d)(2), are consistent with current regulatory standards for operating a supervised independent living program. There are currently rates in place that have been set for the operation of supervised independent living programs based on the number of youth who occupy each supervised independent living program. The rate setting methodology takes into consideration all aspects of operating a supervised independent living program including, but not limited to, staffing, rent, food and clothing. All proposed regulatory amendments fall within the existing rates that have been set to pay for the operation of supervised independent living programs; therefore, there will be no fiscal impact on OCFS.

5. Economic and Technological Feasibility:

The local governmental units that may be affected by the proposed regulations would require no new economic or technological ability or capacity to be able to comply with the proposed regulations.

6. Minimizing Adverse Impact:

The proposed regulations would impose no adverse impact on social services districts and voluntary authorized agencies. Operation of a supervised independent living program is within the discretion of the authorized agency. For those authorized agencies that presently operate a supervised independent living program, they are currently responsible for the supervision and case planning of the youth in such placements.

7. Small Business and Local Government Participation:

On March 8, 2005, OCFS held a meeting on the proposed regulations with the New York State Council of Family and Child Caring Agencies and a number of voluntary authorized agencies located around the state. The meeting was also attended by two of the four Adolescent Services Resource Networks, a network of four regionally based centers that are under contract with OCFS to provide training and technical assistance to authorized agencies on adolescent issues. The regulations were reviewed at the meeting and comments were received. The input from these agencies was used in the development of the proposed regulations. The proposed regulations were shared with OCFS regional office staff, including fire safety inspectors, for input that was also incorporated into the proposed regulations.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The proposed regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law (SSL) to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agen-

cies in rural areas providing foster care will also be affected by the proposed regulations. There are approximately 80 such agencies.

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

Authorized agencies are not required to operate a supervised independent living program. If an authorized agency chooses to exercise its discretion to operate such a program, the proposed regulations would require the authorized agency to obtain the prior written approval of OCFS to operate a supervised independent living program. Once approved by OCFS, the authorized agency may then certify each supervised independent living unit. In addition, the authorized agency would be required to maintain documentation on the following areas for each certified independent living unit: personnel, physical facilities, inquiries to the Statewide Central Register of Child Abuse and Maltreatment and services provided to the youth. Authorized agencies would also be required to provide written notification to the chief executive officer of the municipality in which the authorized agency proposes to establish a supervised independent living unit, as required by section 374-b(2) of the Social Services Law.

3. Costs:

The programmatic requirements set forth in the proposed regulations, with the exception of section 449.4(d)(2), are consistent with current regulatory standards for operating a supervised independent living program. There are currently rates in place that have been set for the operation of supervised independent living programs based on the number of youth who occupy each supervised independent living program. The rate methodology takes into consideration all aspects of operating a supervised independent living program, including, but not limited to, staffing, rent, food and clothing. All proposed regulatory amendments fall within the existing rates that have been set to pay for the operation of supervised independent living programs; therefore, there will be no fiscal impact on OCFS.

4. Minimizing adverse impact:

It is anticipated that the proposed regulations will not have an adverse impact on rural areas.

5. Rural area participation:

On March 8, 2005, OCFS held a meeting on the proposed regulations with the New York State Council of Family and Child Caring Agencies (COFCCA) and a number of voluntary authorized agencies located around the state. COFCCA is comprised of representatives of voluntary authorized agencies that serve foster children in all parts of New York, including rural areas. The meeting was also attended by two of the four Adolescent Services Resource Networks, a network of four regionally based centers that are under contract with OCFS to provide training and technical assistance to authorized agencies on adolescent issues, including those in rural areas. Drafts of the proposed regulations were reviewed and commented upon by them. Their input was incorporated into the proposed regulations. The proposed regulations were shared with OCFS regional office staff, including fire safety inspectors, for input that was also incorporated into the proposed regulations.

Job Impact Statement

A full job impact statement has not been prepared for the proposed regulations. The proposed regulations will not have a substantial impact on jobs or employment opportunities in the State. The proposed regulations may result in an increase in jobs in authorized agencies that decide to operate a supervised independent living program.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Urinalysis Testing

I.D. No. COR-48-07-00002-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 1020.1, 1020.4(a)(1), (2), (c), (d)(2), (3), (4), (e)(1)(iv), (2)(iii), 1020.5(a)(1) and 1020.6 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Urinalysis testing.

Purpose: To improve clarity and readability and refine procedures in response to field experience and new testing equipment.

Text of proposed rule: Section 1020.1 of Title 7 NYCRR is hereby amended as follows:

Urinalysis test procedures shall be used to verify whether or not an inmate has used drugs [or] *and may be used to verify whether or not an inmate has used alcohol.*

Section 1020.4(a)(1) of Title 7 NYCRR is hereby amended as follows:

(1) When correctional staff has reason to believe the inmate has used drugs or alcohol *and/or the inmate is alleged to have been involved in an act of violent misconduct;*

Section 1020.4(a)(2) of Title 7 NYCRR is hereby amended as follows:

(2) When the inmate is found to be in possession of suspected illicit drugs or alcohol *or associated paraphernalia* or when suspected illicit drugs or alcohol or associated paraphernalia are detected or found in an area controlled, occupied or inhabited by the inmate;

Section 1020.4(c) and (d)(2), (3), (4) of Title 7 NYCRR is hereby amended as follows:

(c) Ordering the inmate to be tested. The inmate ordered to submit a urine specimen for urinalysis testing shall be informed of the underlying reason (whether suspicious, routine, or random) why s/he is being ordered to submit the specimen. If the inmate refuses to submit the specimen s/he shall be informed that this refusal constitutes a violation of facility rules and that s/he may incur the same disciplinary disposition that a positive urinalysis result could have supported. The resultant misbehavior report shall indicate that the inmate was informed of the above.

(2) Security or medical staff shall hand to the inmate the specimen bottle, labeled with the inmate's name and number, the date, and any other relevant identifying information. This information shall be typed or written in indelible ink. The inmate shall also be asked if s/he has been taking any medication in the past month, and the inmate's response shall be noted on the request for urinalysis test form. If the inmate's response is "yes" and the subsequent test results are positive, an inquiry shall be made to medical personnel as to what medications the inmate has received in the past month which may lead to a positive result.

(3) Security or medical staff shall ensure that the inmate submits an unadulterated urine specimen in the specimen bottle provided by witnessing the inmate urinate into the bottle. The inmate must be pat frisked prior to submitting the urine specimen and s/he may be required to wash [his hands] or wear gloves to further ensure that the specimen submitted is that of the inmate. The foregoing shall be conducted by security or medical staff of the same sex, in private and outside the presence of other inmates or staff. Female inmates may be required to urinate into a urine collector or an unused plastic cup, rather than the specimen bottle itself. The contents of the collector or cup shall then be transferred to the specimen bottle by the inmate, or by the witnessing staff person in the presence of the inmate.

(4) If the inmate is unable to provide a urine specimen immediately, s/he shall be detained until s/he is able to provide a urine specimen. Drinking water should be available in an amount not to exceed eight ounces per hour. An inmate who is unable to provide a urine specimen within three hours of being ordered to do so shall be considered to be refusing to submit the specimen. The inmate shall be informed that this refusal constitutes a violation of facility rules and that he may incur the same disciplinary disposition that a positive urinalysis result could have supported. The resultant misbehavior report shall indicate that the inmate was informed of the above.

Section 1020.4(e)(1)(iv) of Title 7 NYCRR is hereby amended as follows:

(iv) If a positive result is obtained on the first test, the procedure followed and the results obtained shall be noted *by the operator* on the urinalysis procedure form. A second test shall be performed on the same sample [after new positive and negative control tests have been run]. The results of the second test shall be noted on a second urinalysis procedure form. If a positive result is obtained from the second test, the individual performing the urinalysis testing shall cause a misbehavior report to be issued. The inmate's copy of the misbehavior report shall be accompanied by the request for [the] urinalysis test form, the urinalysis procedure form, the *inmate's* printed [documents] results produced by the urinalysis testing apparatus for the positive tests and a statement of the scientific principles and validity of the testing apparatus.

Section 1020.4(e)(2)(iii) of Title 7 NYCRR is hereby amended as follows

(iii) If a positive result is obtained, a misbehavior report shall be [written] *issued*. The (inmate's copy of the) misbehavior report shall be accompanied by the request for urinalysis test form, the *inmate's* test report from the laboratory or facility, a copy of the methods and procedures used by the testing laboratory or facility, and a statement of the scientific principles and validity of the testing apparatus used by the laboratory or facility.

Section 1020.5(a)(1) of Title 7 NYCRR is hereby amended as follows

(1) the urinalysis procedure forms, any printed documents produced by the urinalysis testing apparatus, and [a] *the appropriate* statement of the scientific principles and validity of the testing apparatus if the facility has urinalysis testing apparatus; or

Section 1020.6 of Title 7 NYCRR is hereby amended as follows

All results obtained in the course of urinalysis testing [shall be assembled and retained on the daily log form or other appropriate form and] shall be entered on the computerized drug testing system.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 112 of the Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates. This includes, but is not limited to, the power to make rules and regulations for the government and discipline of each correctional facility.

Legislative Objective:

By vesting the commissioner with this rulemaking authority, the legislature intended that procedures be established to conduct random urinalysis tests on inmates to detect use of illicit drugs and alcohol and to deter their importation and possession within the correctional environment.

Needs and Benefits:

The use and possession of illicit drugs and alcohol within the correctional environment present a serious threat to safety and security and are contrary to the law and correctional goals. To detect and deter the use of such substances, the department has relied heavily on random urinalysis testing of the total and of selected groups of inmates.

The Department has found it necessary to establish that any inmate who it is believed has used drugs or alcohol, and/or is alleged to have been involved in drug or alcohol related violent misconduct, or has been found to be in possession of illicit drugs, alcohol, and/or associated paraphernalia will be subject to additional testing.

With technological advances have come improved testing equipment and materials. The department has made use of these advancements which enhance accuracy and streamline the testing procedure, eliminating the need to run repeat control procedures after each test.

These provisions will improve substance abuse enforcement efforts within correctional facilities and deter such abuse.

Amendment of 1020.1 includes the discretion to use urinalysis testing procedures to verify whether or not an inmate has used alcohol.

Amendment 1020.4(a)(1) adds the inmate's alleged involvement in an act of violent misconduct as reason for urinalysis testing.

Amendment of 1020.4(a)(2) includes the possession of associated drug or alcohol paraphernalia as a reason for urinalysis testing.

Amendment of 1020.4(c) and (d)(2)(3)(4) revises all references to inmates as he to s/he.

Amendment of 1020.4(e)(1)(iv) eliminates the practice of running new positive and negative tests, when a second test is performed on the same sample, after an initial positive result is obtained. Updated equipment and enhanced materials have perfected the testing procedures and have eliminated the need to run positive and negative controls more than once daily. Also, the clarity and readability of the section has been improved.

Amendment 1020.5(a)(1) improves the clarity and readability of the section.

Amendment of 1020.6 eliminates the necessity for duplicate record keeping.

Costs:

a. To regulated parties: The proposed amendments do not appear to apply to regulated parties

b. To agency, the state and local governments: no discernible costs

c. Source of information: initial cost comparisons

Local Government Mandates:

There are no new mandates imposed upon local governments by these proposals. These proposed amendments do not apply to local governments.

Paperwork:

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

Duplication:

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

Alternatives:

No alternative was considered.

Federal Standards:

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

Compliance Schedule:

The Department of Correctional Services will achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This merely improves clarity and readability and also refines procedures for urinalysis testing in response to field experience and updated testing equipment.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on rural areas. This proposal merely improves clarity and readability and also refines procedures for urinalysis testing in response to field experience and updated testing equipment.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely improves clarity and readability and also refines procedures for urinalysis testing in response to field experience and updated testing equipment.

accreditation decision from their chosen accreditor following an accreditation review which included a site visit conducted on or before December 31, 2006, shall meet the accreditation requirement in subclause (2) of this clause by [December 31, 2006] *June 30, 2008*.

(ii) Deferral for programs under corrective action plan. Programs registered on or before September 1, 2001 that have been denied accreditation between January 1, 2005 and [December 31, 2006] *June 30, 2008*, may request from the department a deferral of the date by which they must be accredited in accordance with the requirements of this item.

(A) Such programs denied accreditation between January 1, 2005 and July 12, 2006 must submit a written request to the department for the deferral of the date for accreditation by September 1, 2006. Such programs denied accreditation between July 13, 2006 and [December 31, 2007] *June 30, 2008* must submit to the department a written request for such deferral within 15 days of receiving written notice of the determination denying accreditation.

(B) Such programs may be granted by the department a deferral of the date by which they must be accredited, provided that the programs submit a corrective action plan that is acceptable to the department. Such corrective action plan must be submitted to the department within 60 days of the programs' submission of the request for the deferral of the date for accreditation. The corrective action plan must adequately address the deficiencies identified by the accreditor and establish an acceptable date by which the programs will be accredited based upon a plan to remedy such deficiencies. The department shall review the corrective action plan to determine whether to grant the deferral of the date for accreditation.

(C) Where the deferral of the date for accreditation is granted, the department shall determine the date by which the programs must be accredited. Such date shall be stated in the corrective action plan and shall not exceed three years from the date of the department's written notice to the programs of the determination to grant the deferral of the date for accreditation. During the period of the implementation of the corrective action plan, the programs shall demonstrate to the department that the programs are making adequate progress toward meeting the chosen accreditor's standards. Any determination denying re-registration of the programs based upon the initial accreditation review shall be held in abeyance and the programs shall continue to be registered during the period of the review by the department of the programs' request for accreditation deferral and the implementation of an acceptable corrective action plan.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents authority to register domestic and foreign institutions in terms of New York standards.

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the education supervision of the State and require reports from such schools.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and the Board of Regents and authorizes the Commissioner to enforce the laws relating to the education system and to execute education policies determined by the Board of Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law requires as a qualification for teaching in the New York public schools the possession of a teacher's certificate under the authority of the Education Law.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Accreditation of Teacher Education Programs

I.D. No. EDU-48-07-00007-P

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

Proposed action: Amendment of section 52.21(b)(2)(iv)(c)(3)(i) and (ii) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 215 (not subdivided); 305(1) and (2); 3001(2); and 3004(1)

Subject: Accreditation of teacher education programs.

Purpose: To extend for six months, until June 30, 2008, the required time period for completion of the accreditation process by teacher education programs registered on or before Sept. 1, 2001 that are awaiting an accreditation decision following a site visit conducted on or before Dec. 31, 2006; and accordingly, to extend the period of eligibility in which certain teacher education programs, initially denied accreditation, may request from the department a deferral of the date by which they must be accredited.

Text of proposed rule: Items (i) and (ii) of subclause (3) of clause (c) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education are amended, effective March 6, 2008, as follows:

(i) Deferral for programs awaiting accreditation decision. Programs registered on or before September 1, 2001 that are awaiting an

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to approval by the Board of Regents, regulations governing the examination and certification of teachers employed in all public schools of the state.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by amending the accreditation requirements for certain programs leading to certification in teacher education ("teacher education programs"), which have not yet received an accreditation decision, to provide a necessary extension of the time in which these programs must complete the accreditation process. Accordingly, the proposed amendment also extends the period of eligibility for certain teacher education programs, initially denied accreditation, to request from the Department of Education a deferral of the date for accreditation, provided the programs submit a corrective action plan acceptable to the Department.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to enable certain teacher education programs to complete the accreditation process. Under existing regulations, certain teacher education programs are eligible for a deferral of the date by which they must be accredited. Currently, teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision, provided they had a site visit as part of their accreditation review by December 31, 2006, must complete the accreditation process and become accredited by an acceptable professional education accrediting association or the Board of Regents by December 31, 2007 in order to maintain registration status. Teacher education programs denied accreditation during a limited period of time, January 1, 2005 through December 31, 2007, may request a deferral of the date for accreditation, provided the programs submit a corrective action plan acceptable to the Department of Education.

The proposed amendment will extend by six months, until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the proposed amendment will extend by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit teacher education programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral within 15 days from their receipt of written notice of the determination denying accreditation, provided the programs submit a corrective action plan acceptable to the Department.

Currently, 111 institutions offer teacher education programs that must achieve accreditation by December 31, 2007. Of these, 100 institutions have achieved accreditation and 11 institutions are awaiting an accreditation decision after a site visit. The Department believes that it is necessary to provide these teacher education programs additional time to achieve accreditation, under limited conditions. Over the last five years, site visits have already occurred at all of the institutions that offer teacher education programs for which accreditation is required by December 31, 2006. Due to the challenges programs face in preparing for accreditation and the demands of scheduling so many site visits in this short period of time, accreditation site visits at all registered teacher education programs were completed in December, 2006. The large numbers of institutions requiring accreditation decisions in a short period of time has resulted in delays in the accreditation processes, especially those seeking accreditation through one of the national accrediting organizations. Consequently, it is likely that the accreditation process will not be completed by December 31, 2007 for some programs.

Accordingly, some of these programs initially denied accreditation will require additional time to resolve first-time accreditation deficiencies that resulted in an initial denial of accreditation. The amendment provides these programs more time to resolve these deficiencies under limited conditions. Thus, for programs denied accreditation during a limited period of time, January 1, 2005 through June 30, 2008, and more particularly, July 13, 2006 through June 30, 2008, the amendment permits a deferral of the date by which accreditation must be achieved, provided that the programs submit a corrective action plan acceptable to the State Education Department. The amendment will not change any other accreditation requirement.

The amendment is needed to provide the Department with regulatory flexibility to accommodate sound teacher education programs that demonstrate the ability to earn accreditation within the short term. Without the amendment, programs may be subject to de-registration for not meeting

the accreditation requirement by December 31, 2007. The amendment is intended to provide needed flexibility to permit programs to address deficiencies, thereby limiting disruptions to students while helping to ensure improvements in program quality.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government, including the State Education Department. The amendment merely extends the required time period for certain teacher education programs to achieve accreditation. The Department will use existing personnel and resources to process requests for deferral of the accreditation date and to review corrective action plans.

(b) Costs to local government: The proposed amendment will not impose any additional costs upon local government.

(c) Costs to private regulated parties: The proposed amendment merely extends by six months, until June 30, 2008, the date by which accreditation must be achieved by certain teacher education programs awaiting an accreditation decision. The amendment will not impose any additional costs on regulated parties.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State government," the amendment will not impose any additional costs on State government, including the State Education Department.

5. PAPERWORK:

The proposed amendment merely extends by six months, until June 30, 2008, the date by which accreditation must be achieved by certain teacher education programs awaiting an accreditation decision. Programs initially denied accreditation and seeking deferral of the date for accreditation will continue to have to apply to the State Education Department for such deferral and submit corrective action plans explaining how they will remedy the deficiencies identified by their chosen accreditor. The amendment will not impose any additional paperwork requirements, beyond those already required pursuant to existing regulations.

6. LOCAL GOVERNMENT MANDATES:

The amendment concerns the accreditation requirements for certain teacher education programs. The proposed amendment does not impose any program, service, duty or responsibility upon local governments.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable significant alternatives to the proposed amendment, and none were considered. Without the amendment, programs that have not received accreditation because of a back log in the accreditation process, may be subject to de-registration for not meeting the accreditation requirement by December 31, 2007.

9. FEDERAL STANDARDS:

There are no applicable standards of the Federal government establishing accreditation requirements for teacher education programs.

10. COMPLIANCE SCHEDULE:

The amendment would be effective on its stated effective date. The amendment provides mandate relief by deferring the date by which eligible teacher education programs must be accredited. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment extends until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the proposed amendment extends by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral, provided the programs submit a corrective action plan acceptable to the Department.

The amendment does not change any other accreditation requirement. It does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The amendment provides mandate relief to colleges and universities that offer teacher education programs by authorizing the deferral of the date by which their teacher education programs must achieve accreditation in order to maintain their registration status. Because it is evident from the nature of the amendment that it does not affect small businesses or local

governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all higher education institutions that offer programs leading to certification in teacher education ("teacher education programs") registered prior to September 1, 2001 that are awaiting an accreditation decision, provided they had a site visit as part of their accreditation review by December 31, 2006, including those located in the State's 44 rural counties and 71 towns in urban counties with a population density of 150 per square mile or less. The Department estimates that eight to 11 institutions will not complete the accreditation process by the current deadline date of December 31, 2007 and will require additional deferral of the date for accreditation, including one that is located in a rural area of New York State.

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

The purpose of the proposed amendment is to enable certain teacher education programs to complete the accreditation process. Under existing regulations, certain teacher education programs are eligible for a deferral of the date by which they must be accredited. Currently, teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision, provided they had a site visit as part of their accreditation review by December 31, 2006, must complete the accreditation process and become accredited by an acceptable professional education accrediting association or the Board of Regents by December 31, 2007 in order to maintain their registration status. Teacher education programs denied accreditation during a limited period of time, January 1, 2005 through December 31, 2007, may request deferral of the date for accreditation, provided the programs submit a corrective action plan acceptable to the Department of Education.

The proposed amendment will extend by six months, until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. Accordingly, the proposed amendment will extend by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit teacher education programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral within 15 days from their receipt of written notice of the determination denying accreditation, provided the programs submit a corrective action plan acceptable to the Department.

The amendment will not change any other accreditation requirement, *i.e.*; programs denied accreditation must continue to submit their correction action plans to the Department within 60 days of the programs' submission of the deferral request. The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply, and will not impose any additional recordkeeping requirements, beyond those already required pursuant to existing regulations.

3. COSTS:

The proposed amendment merely extends the required period of time for certain teacher education programs, which have not yet received an accreditation decision, to achieve accreditation. The amendment does not change any other accreditation requirement. Accordingly, the amendment does not impose any additional costs upon the teacher education programs.

4. MINIMIZING ADVERSE IMPACT:

The amendment provides mandate relief by providing a one-time process to defer the date by which a teacher education program must achieve accreditation. Because of the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

During the development of the proposed amendment, the content of the proposed amendment was discussed with the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including secondary and post-secondary faculty and administrators. The same discussion occurred with the Board of Regents, which includes representatives from all New York

State regions, including rural areas of New York State. In addition, the proposed amendment has been sent to all colleges and universities in New York State that offer teacher education programs leading to certification in the classroom teaching service, including those located in rural areas of New York State.

Job Impact Statement

The purpose of the proposed amendment is to extend by six months, until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the proposed amendment extends by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit teacher education programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral within 15 days from their receipt of written notice of the determination denying accreditation, provided the programs submit a corrective action plan acceptable to the Department.

The amendment provides mandate relief to colleges and universities that offer teacher education programs by authorizing the deferral of the date by which their teacher education programs must achieve accreditation in order to continue to be registered by the Department. The amendment will not change any other accreditation requirement. The amendment will not affect jobs or employment opportunities in these teacher education programs or in any field. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs 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.

Housing Finance Agency

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Qualified Allocation Plan

I.D. No. HFA-48-07-00003-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 2188.1, 2188.2, 2188.4, 2188.5 and 2188.7 of Title 21 NYCRR.

Statutory authority: 26 U.S.C. section 42; Governor Cuomo's Executive Order No. 135 (issued Feb. 27, 1990), continued by Governor Spitzer's Executive Order No. 5 (issued Jan. 1, 2007)

Subject: Agency's qualified allocation plan.

Purpose: To amend the agency's plan to authorize the agency to allow LIHTCs with respect to projects financed with proceeds of tax-exempt bonds of issuers other than the agency.

Public hearing(s) will be held at: 5:30 p.m., Jan. 14, 2008 at Housing Finance Agency, 641 Lexington Ave., New York, 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.nyhomes.org Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations, Revenue Rulings and Procedures, and other publications of the Internal Revenue Service with binding authority applicable thereunder (collectively, the "Code") require each agency that allows Low Income Housing Tax Credits ("LIHTCs") to adopt a Qualified Allocation Plan ("QAP"). The New York State Housing Finance Agency's (the "Agency") QAP currently applies to: (i) the Agency's allocation of LIHTC, as a sub-allocating agency under Executive Order No. 135, issued by the Governor Cuomo on February 27, 1990 and continued by Governor Spitzer's Executive Order No. 5, issued Janu-

ary 1, 2007 and by Part 2040 of Title 9 of the New York Official Compilation of Codes, Rules and Regulations; and (ii) the allowance by the Agency of LIHTC to projects financed by obligations subject to the Private Activity Bond Cap, the interest on which is exempt from federal income tax, as provided in IRC § 42(h)(4) ("Private Activity Bond Credits").

The Agency has typically allocated LIHTCs to projects that receive financing from the Agency, whether in the form of Private Activity Bond Credits or LIHTCs subject to the State Credit Ceiling. Under the Agency's current QAP, allocations and allowances of LIHTCs are made as part of the Agency's overall financing process for residential rental projects located in New York State. No provision is made for an application procedure for projects which may seek no other form of financing other than LIHTCs from the Agency.

The Agency now anticipates that it will receive applications for Private Activity Bond Credits from projects financed by tax exempt bonds from issuers other than the Agency. Namely, DHCR, which has to date allowed Private Activity Bond Credits to New York State Industrial Development Agencies ("IDAs"), is proposing a change in regulations that, in conjunction with the Agency's proposal, will effectively transfer responsibility for the allowance and monitoring responsibilities related to these LIHTCs to the Agency. Accordingly, the Agency proposes to amend its current QAP to provide a procedure for the allowance of LIHTCs to projects financed by other issuers' Private Activity Bonds, but applying to the Agency for LIHTCs.

The proposed procedure is set forth in a proposed Section 2188.4(j):

(j) Projects Financed By an Other Issuer's Private Activity Bonds.

(1) Projects financed by tax-exempt bonds from an issuer other than the Agency subject to the Private Activity Bond Volume Cap in accordance with Section 42(h)(4)(A) of the Code may be allowed LIHTC which is not taken into account regarding the State Credit Ceiling. The Agency's President and Chief Executive Officer, or his or her designee, is hereby authorized to take any actions necessary and appropriate to allow LIHTC to qualified residential rental projects located in New York State that are financed by the proceeds of tax-exempt bonds of an Other Issuer subject to the Private Activity Bond Volume Cap, where such allowance is consistent with this QAP.

(2) Complete applications for the allowance of such LIHTCs must be submitted at least 60 days prior to the later of the proposed construction start date or the planned bond sale date in a form approved by the Agency, and will be accepted and processed throughout the calendar year. The Agency may request any and all information it deems necessary or appropriate for project evaluation. If, in the Agency's sole discretion, any submission is incomplete or if documentation is insufficient to complete any evaluation of the proposed project, processing will be suspended. In such instances, the Agency will notify the respective applicant of how the submission is incomplete and provide at least ten business days for the applicant to submit the requested documentation. Complete applications will be reviewed relative to criteria contained herein at § 2188.5 for eligibility and public purpose. Within 60 days after receipt of a complete application the Agency will issue to the applicant a finding as to whether the application is consistent with this QAP and the amount of LIHTC for which the project qualifies pursuant to Financial Feasibility Review. If the application is consistent with this QAP, the applicant will receive processing instructions for a final allocation of credit. If the project is found to be inconsistent with this Plan, the owner will be notified of the reasons for such finding.

(3) The Agency shall charge a reasonable application fee, due at the time of application. A credit allocation fee, in a reasonable amount determined by the Agency, also is due upon request for issuance of IRS Form 8609. A not-for-profit applicant (or its wholly-owned subsidiary) which will be the sole general partner of the partnership/project owner or sole managing member of the limited liability company/project owner may request and be approved for deferral of payment of the application fee until the date of issuance of IRS Form 8609.

(4) In accordance with Code Section 42(m)(2)(D), the issuer of the tax exempt bonds financing a project is responsible for determining the dollar amount of LIHTCs which is necessary for the financial feasibility of such project and its viability as a qualified low-income housing project pursuant to Section 42(g)(1) of the Code throughout the applicable credit period. Such determination must be included in the applicant's request to the Agency for a final allocation of credit. The Agency will process requests for a final allocation of credit within 60 days after the date of receipt of all required documentation including an executed credit regulatory agreement in a form satisfactory to the Agency with proof of recording. The Agency will apply the criteria for Feasibility Review and LIHTC Underwriting, as

described herein at § 2188.5(i), in determining the amount for the final credit allocation with respect to such project.

(5) Regulatory Term. The regulatory requirements of projects receiving an allocation or allowance of LIHTC under the terms of this Plan are described in § 2188.5 of this Plan and shall be subject to compliance monitoring as described in § 2188.7 of this Plan.

Additional Sections of the QAP have been amended to apply its provisions to projects financed by an Other Issuer's Private Activity Bonds. To view the amendments to the QAP in their entirety, a PDF document is available at the Agencies website.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Assistant Counsel, Housing Finance Agency, 641 Lexington Ave., New York, NY 10022, (212) 688-4000, ext. 365, e-mail: jayt@nyhomes.org

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

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

Regulatory Impact Statement

1. Statutory Authority

The proposed amendments relate to the Qualified Allocation Plan ("Plan") of the New York State Housing Finance Agency ("Agency"). The Plan pertains to the allocation of federal low-income housing tax credit ("LIHTC") by the Agency under § 42 of the Internal Revenue Code. Pursuant to § 44(16) of the Private Housing Finance Law, the Agency is authorized to accept aid in any form from the federal government or any agency or instrumentality thereof and to comply with the terms and conditions thereof. The Agency serves as a sub-allocating housing credit agency with respect to such LIHTCs pursuant to Executive Order No. 135 issued by Governor Cuomo on February 27, 1990, which has been continued by Governor Spitzer's Executive Order No. 5 issued on January 1, 2007. For an allocation of LIHTCs to be valid, under § 42(m) of the Code, such allocation must be made pursuant to a qualified allocation plan that satisfies certain selection and other criteria set forth in § 42(m) of the Code, and that is approved in accordance with rules similar to those set forth under § 147(f)(2) of the Code. As such, the Plan constitutes a rule under § 102(2)(a) of the New York State Administrative Procedures Act, pursuant to which the Agency's Plan has been codified in 21 NYCRR Part 2188.

2. Legislative Objectives

The proposed amendments will authorize the Agency to allow certain LIHTCs, generally referred to as "As of Right" LIHTCs, with respect to projects financed with proceeds of tax-exempt bonds of issuers other than the Agency. The Plan currently does not provide such authority to the Agency.

3. Needs and Benefits

The proposed amendments are required to implement the transfer from the New York State Division of Housing and Community Renewal ("DHCR") to the Agency of existing housing credit agency authority with respect to As of Right LIHTCs with regard to projects financed by proceeds of tax-exempt bonds of an issuer other than the Agency. The proposed transfer of responsibility is intended to increase the efficiency with which the State of New York participates in the federal LIHTC program.

4. Costs

There are no substantial costs associated with the adoption of or compliance with the proposed amendments. The proposed changes concern the transfer of existing programmatic authority from one State agency to another. Due to the fact that there will be no substantial additional costs to any of the parties involved, no cost analysis is necessary.

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

The proposed amendments will not impose any substantial additional costs on those parties who seek As of Right LIHTCs for projects financed by proceeds of tax-exempt bonds of issuers other than the Agency.

b. Costs to the Agency; the state and local governments for the implementation and continuation of the rule.

There are no substantial costs associated with the adoption of the amended regulations.

c. The information, including the source(s) of such information and methodology upon which the cost analysis is based.

Since there will be no substantial cost to any party involved, no such analysis is necessary.

d. Where an agency finds that it cannot fully provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost estimate cannot be provided.

Not applicable because there will be no substantial costs to any party involved in the procedures to be implemented under the proposed rule.

5. Local Government Mandates

The amended regulations do not impose any service, duty or responsibility upon any county, city, town, school district, fire district, or other special district.

6. Paperwork

The amendments to the regulations require only minimal changes to the documentation already necessary with respect to the projects and parties concerned.

7. Duplication

DHCR is in the process of revising its LIHTC Qualified Allocation Plan so as to facilitate the proposed transfer of authority. There are no other relevant rules or other legal requirements of the state or federal governments that may duplicate, overlap, or conflict with the proposed rule.

8. Alternatives

The only alternative to the proposed amendments would be for the Agency to continue to operate in the way it currently does and not be able to allow As of Right LIHTCs with respect to projects that are financed by proceeds of tax-exempt bonds of an issuer other than the Agency.

9. Federal Standards

These amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule

The proposed amendments will take effect as soon as possible under applicable law.

Regulatory Flexibility Analysis

1. Effect of Rule

The proposed amendments will have no significant effect on small businesses or local governments. The proposed amendments consist of modifications in the Qualified Allocation Plan ("Plan") of the New York State Housing Finance Agency ("Agency"). The Plan pertains to the allocation of federal low-income housing tax credit ("LIHTC") under '42 of the Internal Revenue Code. The Agency's Plan has been codified in 21 NYCRR Part 2188. The proposed amendments are necessary and appropriate to implement the transfer to the Agency from the New York State Division of Housing and Community Renewal ("DHCR") of existing housing credit agency authority with respect to federal LIHTCs for certain categories of qualified residential rental housing projects. DHCR is also in the process of amending its Qualified Allocation Plan to effect such transfer of authority to AHC. Under the proposed rule, small businesses and local governments that are involved in the financing or administration of such projects will interact with the Agency rather than DHCR in relation to LIHTC allocation and compliance monitoring with respect to such projects.

2. Compliance Requirements

The proposed amendments require no substantial reporting, record-keeping or other affirmative acts for those small businesses and local governments beyond those otherwise applicable with respect to projects participating in the federal LIHTC program.

3. Professional Services

Compliance with the proposed amendments will not require any substantial change with respect to those professional services, if any, that small businesses and local governments may need in relation to LIHTCs for the types of projects to which the Plan pertains.

4. Compliance Costs

The proposed amendments would not impose any substantial initial capital or annual costs on a regulated small business or local government in addition to any such costs otherwise applicable.

5. Economic and Technological Feasibility

There are no special economic or technological requirements for small businesses or local governments for compliance with the proposed amendments. The proposed amendments do not substantially increase or change the need for economic or technical services, nor do they change the types of economic or technological services necessary.

6. Minimizing Adverse Impact

There will be no adverse impact by the proposed amendments.

7. Small Business and Local Government Participation

The Agency will publish a general notice of the proposed amendments to its Plan. The Agency does not anticipate that the proposed amendments to its Plan will have any substantial direct affect on the interests of small business and local government. To provide any interested parties, includ-

ing small business and local government, with notice of the proposed amendments in addition to that provided by publication in the *State Register*, and to minimize costs of participation in the rule making process, the Agency will post and solicit comments on the proposed amendments on its website. Copies of the amended regulations will be available upon request in both hard copy and electronic format. The Agency shall respond in a timely manner to any written requests, comments, and questions about the proposed rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas

The proposed amendments to the Qualified Allocation Plan ("Plan") of the New York State Housing Finance Agency ("Agency") do not apply specifically to any rural area. The Plan pertains to the allocation of federal low-income housing tax credits by the Agency under § 42(m) of the Internal Revenue Code. The proposed amendments are required to implement the transfer from the New York State Division of Housing and Community Renewal to the Agency of existing housing credit agency authority with respect to federal low-income housing tax credits for certain categories of projects. The Agency's Plan has been codified in 21 NYCRR Part 2188.

2. Reporting, Recordkeeping, and Other Compliance Requirements and Professional Services

There are no substantial reporting, recordkeeping, or other compliance requirements or professional services needed to comply with the proposed amendments to the Agency's Plan specifically in a rural area. With respect to any party that wishes to apply for federal low-income housing tax credits pursuant to the Agency's Plan, the proposed amendments do not substantially increase or change the otherwise necessary reporting, record-keeping, or other compliance or professional services requirements.

3. Costs

The amendments will have little effect as compared to the rules that are already in effect. The Agency does not anticipate any variation in such costs, if any, with respect to entities in rural areas.

4. Minimizing Adverse Impact

There will be no adverse impact from these amendments. The Agency has considered the approaches suggested under SAPA § 202-bb(2) as well as similar approaches, and anticipates that the proposed amendments will not have any adverse impact on rural areas.

5. Rural Area Participation

The Agency will publish a general notice of the proposed amendments to its Plan. The Agency does not anticipate that the proposed amendments to its Plan will have any substantial direct affect on interests in rural areas. To provide any interested parties, including those in rural areas, with notice of the proposed amendments in addition to that provided by publication in the *State Register*, and to minimize costs of participation in the rule making process, the Agency will post and solicit comments on the proposed amendments on its website. Copies of the amended regulations will be available upon request in both hard copy and electronic format. The Agency shall respond in a timely manner to any written requests, comments, and questions about the proposed rule.

Job Impact Statement

1. Nature of Impact

The proposed amendments will not have a substantial impact on jobs or employment opportunities because the amendments will not involve creation of substantial regulatory costs or burdens.

2. Categories and Numbers Affected

No categories of jobs or employment opportunities will be affected by the proposed amendments because they will not involve creation of substantial regulatory costs or burdens.

3. Regions of Adverse Impact

No specific regions of New York State will experience disproportionate adverse impact on jobs or employment opportunities because the amendments will not involve creation of substantial regulatory costs or burdens.

4. Minimizing Adverse Impact

Due to the proposed amendments' lack of adverse impact on jobs or employment in the State of New York, the Agency will not take any measures to minimize adverse impacts.

5. Self-employment Opportunities

Not applicable because of the amendments' lack of adverse impact on jobs or employment.

Department of Law

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Law publishes a new notice of proposed rule making in the NYS Register.

Freedom of Information Law, Personal Privacy Protection Law

I.D. No.	Proposed	Expiration Date
LAW-45-06-00020-P	November 8, 2006	November 8, 2007

Public Service Commission

NOTICE OF ADOPTION

Carrying Costs by St. Lawrence Gas Company, Inc.

I.D. No. PSC-20-07-00018-A
Filing date: Nov. 7, 2007
Effective date: Nov. 7, 2007

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

Action taken: The commission, on Nov. 7, 2007, approved St. Lawrence Gas Company, Inc.'s (company) petition to amend the commission's April 18, 2007 order to authorize deferral of carrying costs at the company's overall pretax rate of return of 10.93 percent on \$750,300 of deferred costs.
Statutory authority: Public Service Law, sections 4(1), 66(1), (4) and (12)

Subject: To authorize deferral of carrying costs.

Purpose: To approve the deferral of carrying costs.

Substance of final rule: The Public Service Commission approved St. Lawrence Gas Company, Inc.'s (Company) petition to amend the Commission's April 18, 2007 Order to authorize deferral of carrying costs at the Company's overall pretax rate of return of 10.93 percent on \$750,300 of deferred costs.

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-1471SA2)

NOTICE OF ADOPTION

2006 RPM Report by Consolidated Edison Company of New York Inc.

I.D. No. PSC-29-07-00023-A
Filing date: Nov. 7, 2007
Effective date: Nov. 7, 2007

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

Action taken: The commission, on Nov. 7, 2007, adopted an order directing Consolidated Edison Company of New York Inc. (Con Edison) to defer on its books from shareholder funds a ratepayer credit of \$18 million for not meeting the reliability goals for 2006 under the terms of the reliability performance mechanism (RPM).

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's 2006 reliability report.

Purpose: To require a ratepayer credit of \$18 million.

Substance of final rule: The Public Service Commission adopted an order directing Consolidated Edison Company of New York Inc. to defer on its books from shareholder funds a ratepayer credit of \$18 million for not meeting the reliability goals for 2006 under the terms of its Reliability Performance Mechanism.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (04-E-0572SA13)

NOTICE OF ADOPTION

Distributed Generation Commercial and Industrial Rates by Central Hudson Gas & Electric Corporation

I.D. No. PSC-37-07-00010-A
Filing date: Nov. 7, 2007
Effective date: Nov. 7, 2007

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

Action taken: The commission, on Nov. 7, 2007, adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 12.

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

Subject: To update the rates for commercial and industrial distributed generation customers.

Purpose: To approve Central Hudson's tariff amendment to update the rates for commercial and industrial distributed generation customers.

Substance of final rule: The Public Service Commission approved Central Hudson Gas & Electric Corporation's tariff amendment, to update the rates for commercial and industrial distributed generation customers.

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.
 (02-M-0515SA18)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Merger by United Water Owego Inc. and United Water Nichols Inc.

I.D. No. PSC-48-07-00013-P

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

Proposed action: The Public Service Commission is considering action on the joint petition to merge United Water Owego Inc. and United Water Nichols Inc., with United Water Owego-Nichols Inc. as the surviving corporation.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c&h and 108

Subject: Merger of United Water Owego Inc. and United Water Nichols Inc.

Purpose: To consider the merger of United Water Owego Inc. and United Water Nichols Inc. with United Water Owego-Nichols Inc. as the surviving corporation.

Public hearing(s) will be held at: 10:00 a.m. to 5:00 p.m., Evidentiary Hearing, Dec. 4, 2007 at Public Service Commission, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.*

*There could be requests to reschedule the hearing. Notification of any subsequent scheduling changes will be available at the DPS Website (www.dps.state.ny.us) under Case 07-W-0872.

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: On July 26, 2007, United Water Owego Inc. (UWO) and United Water Nichols Inc. (UWN) filed a joint petition requesting Public Service Commission approval to merge UWO and UWN and to dissolve UWN upon receiving Commission approval. UWO and UWN serve approximately 1,439 and 219 residential, non-residential and fire protection customers, respectively, in the Towns of Owego, Tioga and Nichols, Tioga County. The combined companies would have 1,658 customers. The Commission is considering the petition.

Text of proposed 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 argument may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-W-0872SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Water Rates and Charges by United Water Owego Inc. and United Water Nichols Inc.

I.D. No. PSC-48-07-00014-P

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

Proposed action: The Public Service Commission is considering action on the joint petition for approval of various changes in the rates, charges, rules and regulations contained in United Water Owego Inc. and United Water Nichols Inc.'s tariff schedules, P.S.C. No. 1—Water.

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

Subject: Water rates and charges.

Purpose: For consideration to increase United Water Owego Inc. and United Water Nichols Inc. as a combined entity, its annual revenues by approximately \$720,487 or 70 percent, or separately, with United Water Owego Inc. increasing its annual revenues by \$553,529 or 60 percent and United Water Nichols Inc. increasing its annual revenues by \$166,958 or 180 percent.

Public hearing(s) will be held at: 10:00 a.m. to 5:00 p.m., Evidentiary Hearing, Dec. 4, 2007 at Public Service Commission, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.*

*There could be requests to reschedule the hearing. Notification of any subsequent scheduling changes will be available at the DPS Website (www.dps.state.ny.us) under Case 07-W-0639.

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: On May 31, 2007, United Water Owego Inc. (UWO) and United Water Nichols Inc. (UWN), (or collectively, the companies) filed amendments to their water tariff schedules by which they propose changes in their rates, charges, rules and regulations, either sepa-

ately or as a combined entity. The companies estimated that the revisions would produce a combined increase in annual revenues of approximately \$720,487 or 70%; or separately, with UWO proposing an increase in annual revenues of approximately \$553,529 or 60% and UWN proposing an increase in annual revenues of approximately \$166,958 or 180%. On June 25, 2007, the Commission initially suspended the effective date of the filing through October 27, 2007; and, on October 18, 2007, the filing was further suspended through April 27, 2008. UWO and UWN serve approximately 1,439 and 219 residential, non-residential and fire protection customers, respectively, in the Towns of Owego, Tioga and Nichols, Tioga County, and if combined, would serve 1,658 customers. The Commission may approve or reject, in whole or in part, or modify the companies' request.

In a related proceeding, Case 07-W-0872, the companies filed a joint petition seeking approval to merge UWN into UWO, and, should the proposed merger be approved, and new rates established in this proceeding, all existing and proposed UWN tariff leaves would be eliminated and customers of that company will be billed at the UWO proposed rates.

Text of proposed 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 argument may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-W-0639SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Sprint Communications Company L.P. and Germantown Telephone Company, Inc.

I.D. No. PSC-48-07-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Sprint Communications Company L.P. and Germantown Telephone Company, Inc. for approval of a mutual traffic exchange agreement executed on Oct. 15, 2007.

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

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

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

Substance of proposed rule: Sprint Communications Company L.P. and Germantown Telephone Company, Inc. have reached a negotiated agreement whereby Sprint Communications Company L.P. and Germantown Telephone Company, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-C-1275SA1)

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

Water Rates and Charges by Hill Waterworks Corp.

I.D. No. PSC-48-07-00010-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, or modify, tariff revisions filed by Hill Waterworks Corp. to make various changes in the rates, charges, rules and regulations in its tariff schedule, P.S.C. No. 2—Water, to become effective April 1, 2008.

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

Subject: Water rates and charges.

Purpose: To increase Hill Waterworks Corp.'s annual revenues by \$4,903 or 27 percent.

Substance of proposed rule: On October 18, 2007, Hill Waterworks Corp. (Hill or the Company) filed to become effective April 1, 2008, Leaf No. 12, Revision 1, to its tariff schedule, P.S.C. No. 2—Water. Hill requests to increase its annual revenues by about \$4,903 or 27 percent. The company provides metered rate water service to 48 residential customers in the Town of Kinderhook, Columbia County. Based on an annual usage of 90,000 gallons, the typical residential customer's annual bill would increase from \$382 to \$484. The minimum quarterly charge would increase from \$63.30 to \$68.30, and the rate per thousand gallons for usage in excess of 10,000 gallons per quarter would increase from \$2.57 to \$4.21. Fire protection service is not provided. Hill's tariff, along with its proposed changes (Leaf No. 12, Revision 1) is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us)—located under the file room—Tariffs. The Commission may approve or reject, in whole or in part, or modify, the company's proposed tariff revisions.

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

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

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

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

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

(07-W-1257SA1)

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

Use of the Voluntary State Funding Mechanism by Northeast Gas Association

I.D. No. PSC-48-07-00011-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 allow the Northeast Gas Association and its research and development arm called NYSEARCH, on behalf of the eight local distribution companies in New York State, authorization to use the voluntary state funding mechanism (Millennium Fund), established in the commission's Feb. 14, 2000 order in Case 99-G-1369, for research into the effects of varying natural gas compositions on installed appliance populations to assess impacts on operational safety and performance.

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

Subject: Use of the voluntary state funding mechanism, called Millennium Fund.

Purpose: To consider whether to allow the voluntary state funding mechanism to be used for research into effects of varying natural gas compositions on installed appliance populations.

Substance of proposed rule: The Northeast Gas Association and its Research and Development arm called NYSEARCH, on behalf of the eight Local Distribution Companies in New York State, has requested authorization to use the voluntary state funding mechanism (Millennium Fund), established in the Commission's February 14, 2000 Order in case 99-G-1369, for research into the effects of varying natural gas compositions on installed appliance populations to assess impacts on operational safety and performance. The Commission will consider that petition and may change the disposition of the money or make other related changes.

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-1243SA1)

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

Financing and Water Rates and Charges by Birch Hill Water Supply Corporation

I.D. No. PSC-48-07-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Birch Hill Water Supply Corporation for the authority to enter into financing in order to make water system improvements and to institute a customer surcharge to support the financing.

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

Subject: Financing and water rates and charges.

Purpose: To approve financing in order to make water system improvements and to institute a customer surcharge to support the financing.

Substance of proposed rule: On November 13, 2007, Birch Hill Water Supply Corporation (the company) filed a petition requesting Public Service Commission approval to enter into a financing of approximately \$525,000 in order to make water system improvements and to institute a customer surcharge to support the financing. The company provides metered rate water service to 68 residential customers located in the Town of Beekman, Dutchess County. The Commission may approve or reject, in whole or in part, or modify, the company's petition.

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

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

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

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

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

(07-W-1354SA1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax

I.D. No. TAF-36-07-00004-A

Filing No. 1230

Filing date: Nov. 13, 2007

Effective date: Nov. 13, 2007

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Oct. 1, 2007, and ending Dec. 31, 2007, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-36-07-00004-P, Issue of September 5, 2007.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Handicapped-Accessible Taxicabs and Livery Service Vehicles Credit

I.D. No. TAF-48-07-00004-P

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

Proposed action: This is a consensus rule making to add Subpart 5-5 and section 106.5 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 697(a); 1096(a); and L. 2006, ch. 522, section 4

Subject: Handicapped-accessible taxicabs and livery service vehicles credit.

Purpose: To provide a rule regarding eligibility for the handicapped-accessible taxicabs and livery service vehicles credit.

Text of proposed rule: Section 1. A new Subpart 5-5 is added to such regulations to read as follows:

SUBPART 5-5 HANDICAPPED-ACCESSIBLE TAXICABS AND LIVERY SERVICE VEHICLES CREDIT

(Statutory authority: Tax Law § 210(40))

Section 5-5.1 General.

As provided in section 210.40 of the Tax Law and this Subpart, a taxpayer providing a taxicab or livery service that incurred an incremental cost associated with the purchase of a handicapped-accessible vehicle or the conversion of a motor vehicle to a handicapped-accessible vehicle that is used in providing such service is allowed to claim a handicapped-accessible taxicabs and livery service vehicle credit against the tax imposed by article 9-A of the Tax Law. Chapter 522 of the Laws of 2006, which added the credit, provided that it would remain in effect until December 31, 2008, at which time it would be deemed to be repealed.

Section 5-5.2 Meaning of terms.

In addition to the terms defined in section 210.40 of the Tax Law, the following terms, as used in this Subpart, have these meanings:

(a) The term "providing a taxicab or livery service" means the operation of a taxicab or livery in New York State in accordance with required licenses, permits or registrations issued by a local authority and the New York State Department of Motor Vehicles.

(b) The term "taxicab" shall have the same meaning as such term is defined in section 148-a of the New York State Vehicle and Traffic Law.

(c) The term "livery" shall have the same meaning as such term is defined in section 121-e of the New York State Vehicle and Traffic Law.

(d) The term "incremental cost" means the expenses specifically associated with the excess purchase price of a handicapped-accessible vehicle over the purchase price of a motor vehicle that is the same make and model except for the equipment necessary to convert it to a handicapped-accessible vehicle. In the case of a conversion of an existing motor vehicle, it includes the equipment and installation costs necessary to convert it to a handicapped-accessible vehicle.

Section 5-5.3 Computation of the Handicapped-Accessible Taxicabs and Livery Service Vehicles Credit.

The amount of the credit that a taxpayer is allowed is equal to the incremental cost incurred for each handicapped-accessible vehicle used in providing a taxicab or livery service.

Section 5-5.4 Limitations and carryover.

(a) The credit may not exceed \$10,000 per vehicle and may only be claimed once per vehicle.

(b) The credit and carryover of such credit allowed for any taxable year, in the aggregate, may reduce the tax due to zero.

(c) If the taxpayer has an excess credit after reducing the tax due to zero, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for that year or years.

Section 2. A new section 106.5 is added to such regulations to read as follows:

Section 106.5 Handicapped-Accessible Taxicabs and Livery Service Vehicles Credit. (Tax Law § 606(oo))

(a) General. As provided in section 606(oo) of the Tax Law, a taxpayer that provides a taxicab or livery service in New York State in accordance with required licenses or permits issued by a local authority and the New York State Department of Motor Vehicles that incurred an incremental cost associated with the purchase of a handicapped-accessible vehicle or the conversion of a motor vehicle to a handicapped-accessible vehicle that is used in providing such service is allowed to claim a handicapped-accessible taxicabs and livery service vehicles credit against the tax imposed by article 22 of the Tax Law. The provisions of Subpart 5-5 of this Title addressing the handicapped-accessible taxicabs and livery service vehicles credit against the tax imposed by article 9-A are applicable to the handicapped-accessible taxicabs and livery service vehicles credit allowed by section 606(oo) of the Tax Law.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the rule as written because the amendments merely reflect statutory amendments, and existing interpretation of those statutory amendments, made by Chapter 522 of the Laws of 2006.

Chapter 522 of the Laws of 2006 added a tax credit for handicapped-accessible taxicabs and livery service vehicles to the business corporation franchise tax and the personal income tax. Section 4 of Chapter 522 of the Laws of 2006 directs the Commissioner to prescribe a rule with regard to establishing the requirements of companies eligible for the credit. The purpose of this amendment is to fulfill that statutory direction by reflecting the legislative enactment of the credit in the business corporation franchise tax regulations and the personal income tax regulations. In addition, the Department previously issued guidance on the new credit. The amendments also reflect this guidance.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. The purpose of the amendments is to provide a rule regarding the handicapped-accessible taxicabs and livery service vehicles credit.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-48-07-00005-P

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

Proposed action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Jan. 1, 2008, and ending March 31, 2008, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xlix) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xlviii) October - December 2007	22.0	38.6	14.0	22.0	36.85
(xlix) January - March 2008	22.0	38.4	14.0	22.0	36.65

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are 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.

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

Packages Containing Fewer than 20 Cigarettes

I.D. No. TAF-48-07-00006-P

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

Proposed action: This is a consensus rule making to amend sections 74.2 and 82.2 of Title 20 NYCRR. This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules.

Statutory authority: Tax Law, sections 171, subd. First and 475 (not subdivided)

Subject: Packages containing fewer than 20 cigarettes.

Purpose: To delete obsolete references to the 75 cent cigarette tax stamp and packages of 10 cigarettes.

Text of proposed rule: Section 1. Subparagraph (i) of paragraph (2) of subdivision (b) of section 74.2 of such regulations is amended to read as follows:

(i) The department will furnish State of New York cigarette stamps in [75 cent,] \$1.50[,] and \$1.87½ denominations or the equivalent thereof. In addition, joint stamps of a distinctive color and design will be furnished in \$3.00 (\$1.50 State tax plus \$1.50 city tax per package of 20 cigarettes) and \$3.755 (\$1.87½ State tax plus \$1.88 city tax per package of 25 cigarettes) denominations, or the equivalent thereof, for use on packages of cigarettes to be sold in the City of New York. Such stamps will be of an adhesive and/or heat transfer nature. (Stamps will also reflect prepayment of sales tax on cigarettes imposed under section 1103 of the Tax Law.)

Section 2. Subparagraph (ii) of paragraph (2) of subdivision (b) of section 82.2 of such regulations is amended to read as follows:

(ii) Agent’s presumptive minimum markups. In the absence of filing with the Department of Taxation and Finance satisfactory proof of a lesser cost of doing business of the agent making the sale, the cost of doing business by the agent shall presumed to be:

 (“a”) ⅞ percent (.875%) of the basic cost of cigarettes plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes with respect to sales to CMSA wholesale dealers;

 (“b”) 1½ percent (1.5%) of the basic cost of cigarettes plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes with respect to sales to chain stores; and

 (“c”) 3⅞ percent (3.875%) of the basic cost of cigarettes plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes with respect to sales to CMSA retail dealers.

Section 3. Paragraph (2) of subdivision (e) of section 82.2 of such regulations is amended to read as follows:

(2)(i) Agent’s sales to other agents (illustrated). A licensed cigarette agent may not sell cigarettes in New York State to any other agent at a price which is less than the basic cost of cigarettes or, using the example in section 80.2 of this Title, \$55 per carton. (See section 74.3(a)(3) of this Title for rules pertaining to custom stamping.)

(ii) Agent’s sales to CMSA wholesale dealers (illustrated). In the absence of substantiating a lesser actual cost of doing business, a licensed cigarette agent may not sell cigarettes in New York State to any CMSA wholesale dealer at a price which is less than the basic cost of cigarettes plus ⅞ percent of such basic cost plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes (the presumed cost of doing business by the agent with respect to such sales) or, using the example in section 80.2, of this Title, \$55.69 per carton computed as follows:

Basic cost of cigarettes	\$55.00
Presumed cost of doing business	
Percentage mark-up (.875% of \$55.00)	+ .48125
2 cents/package of 20 cigarettes	
multiplied by 10 packages/carton	+ .20
Cost of the agent for sales to CMSA wholesale dealers (rounded to next higher cent).....	\$55.69

(iii) Agent’s sales to chain stores (illustrated). A licensed cigarette agent may not sell cigarettes in New York State to a chain store having 15 or more retail outlets, excluding vending machine operators, where such cigarettes are delivered to a central warehouse owned and operated by such chain store and which are then delivered by the chain store to its retail outlets, at a price which is less than the basic cost of cigarettes or, using the example in section 80.2 of this Title, \$55.00 per carton. In the case of other chain stores and in the absence of substantiating a lesser actual cost of doing business, a licensed cigarette agent may not sell cigarettes in New York State to such a chain store at a price which is less than the basic cost of cigarettes plus 1½ percent of such basic cost plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes (the presumed cost of doing business by the agent with respect to such sales) or, using the example in section 80.2 of this Title, \$56.03 per carton computed as follows:

Basic cost of cigarettes	\$55.00
Presumed cost of doing business	
Percentage mark-up (1.5% of \$55.00)	+ .825
2 cents/package of 20 cigarettes	
multiplied by 10 packages/carton	+ .20
Cost of the agent for sales to chain stores (rounded to next higher cent).....	\$56.03

(iv) Agent’s sales to CMSA retail dealers (illustrated). In the absence of substantiating a lesser actual cost of doing business, a licensed cigarette agent may not sell cigarettes in New York State to any CMSA retail dealer at a price which is less than the basic cost of cigarettes plus 3⅞ percent of such basic cost plus [1 cent per package of 10 cigarettes,] 2 cents per package of 20 cigarettes and in the case of a package containing more

than 20 cigarettes, 2 cents and one-half of a cent for each five cigarettes in excess of 20 cigarettes (the presumed cost of doing business by the agent with respect to such sales) or, using the example in section 80.2 of this Title, \$57.34 per carton computed as follows:

Basic cost of cigarettes	\$55.00
Presumed cost of doing business	
Percentage mark-up (3.875% of \$55.00)	+ \$2.13125
2 cents/package of 20 cigarettes	
multiplied by 10 packages/carton	+ .20
Cost of the agent for sales to CMSA retail dealers	
(rounded to next higher cent)	+ 57.34

(v) Agent’s sales to consumers (illustrated). A licensed cigarette agent may not sell cigarettes in New York State at retail, or to any person who cannot prove its status as other than a consumer, at a price which is less than the cost of the CMSA retail dealer or, using the example in section 80.2 of this Title, \$61.35 per carton. See section 82.5 of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.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.

Statement of Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 3, 2007, *State Register* summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1997 and 2002, and a notice of the Department’s intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. This information was also posted to the Department’s Web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>) on January 2, 2007. Comments from the public concerning the continuation or modification of these rules were invited until February 20, 2007.

The 2002 rule amended sections 70, 74, 79, 80 and 82 of the Cigarette Tax and Cigarette Marketing Standards regulations, as published in Subchapter I of Chapter I of Title 20 NYCRR. The rule, which reflected the statutory increase in the rate of New York State cigarette excise tax that was effective on April 3, 2002; provided for commissions allowable to cigarette tax agents; effectuated the floor tax on cigarettes and unaffixed stamps in inventory; and more realistically reflected the basic cost of cigarettes, was adopted by the Commissioner on March 14, 2002, and published in the *State Register* on March 27, 2002, (I.D. # TAF-13-02-00010-A).

As a result of its 2007 review, the Department determined that some of the sections that were amended in 2002 are dated and should not be continued without modification. The rule updates sections 74.2 and 82.2 of the regulations by deleting obsolete references to the 75 cent cigarette tax stamp and packages of 10 cigarettes to conform to section 1399-gg of the Public Health Law, which was amended in 2004 to prohibit the sale or distribution of cigarettes in New York State in packages containing fewer than 20 cigarettes. As a result, the Department discontinued the 75 cent cigarette tax stamp that was applicable to packages of 10 cigarettes. The rule also adds a statutory cross-reference to the prepaid sales tax on cigarettes imposed under Tax Law section 1103 and a regulatory cross-reference to custom stamping.

Other than the change made to sections 74.2 and 82.2, the 2002 rule remains valid and is continued without modification.

Assessment of Public Comment

A written comment was received from Daniel T. Warren of West Seneca, NY, in response to TAF-13-02-00010-A, which amended 20 NYCRR Parts 70, 74, 79, 80 and 82, and was part of the listing of rules to be reviewed by the Department in 2007, as published in the *State Register* on January 3, 2007.

Mr. Warren’s comment does not directly pertain to the modification of the rule but, rather, urges our agency to adopt, with certain modifications, a 2003 proposal regarding sales on Indian reservations (TAF-38-03-00017-P) that was allowed to expire. Mr. Warren’s suggestion is beyond the scope of this rule which reflected the statutory increase in the rate of New York State cigarette excise tax that was effective on April 3, 2002; provided for commissions allowable to cigarette tax agents; effectuated the floor tax on cigarettes and unaffixed stamps in inventory; and more realistically reflected the basic cost of cigarettes. No changes have been made to the 2002 rule as a result of Mr. Warren’s comment.

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because the amendments merely reflect statutory changes that are not controversial in nature. The rule merely updates the Cigarette Tax and Cigarette Marketing Standards regulations by deleting obsolete references to the 75 cent cigarette tax stamp and packages of 10 cigarettes to conform to section 1399-gg of the Public Health Law, which prohibits the sale or distribution of cigarettes in New York State in packages containing fewer than 20 cigarettes. The rule also adds statutory and regulatory cross-references.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no impact on jobs and employment opportunities. The rule merely updates the Cigarette Tax and Cigarette Marketing Standards regulations by deleting obsolete references to the 75 cent cigarette tax stamp and packages of 10 cigarettes to conform to section 1399-gg of the Public Health Law, which prohibits the sale or distribution of cigarettes in New York State in packages containing fewer than 20 cigarettes. The rule also adds statutory and regulatory cross-references.

Department of Transportation

NOTICE OF ADOPTION

Enhancing Safety in Highway Construction and Maintenance Work Zones

I.D. No. TRN-37-07-00004-A

Filing No. 1228

Filing date: Nov. 9, 2007

Effective date: Nov. 28, 2007

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

Action taken: Repeal of Part 164 and addition of new Part 164 to Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 224-a; and Transportation Law, section 22

Subject: Enhancing safety in highway construction and maintenance work zones.

Purpose: To satisfy requirements of the “Work Zone Safety Act of 2005” chapter 223 of the Laws of 2005. Proposed reg provide for measures to be taken in “major active work zones” in New York State.

Text or summary was published in the notice of proposed rule making, I.D. No. TRN-37-07-00004-P, Issue of September 12, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Barbara O’Neill, Department of Transportation, 50 Wolf Rd., 6th Fl., Albany, NY 12232, (518) 457-2411, e-mail: boneill@dot.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Preferred Vehicle Configuration Definition and Type 9 Permit Requirements

I.D. No. TRN-48-07-000001-P

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

Proposed action: This is a consensus rule making to amend sections 154-2.2 and 154-2.4 of Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 385(15)

Subject: Preferred vehicle configuration definition and type 9 permit requirements.

Purpose: To introduce vehicle configurations and permit types that are more protective of the State’s infrastructure.

Text of proposed rule: Section 1. Section 154-2.2 of Subpart 154-2 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new subdivision (am) to read as follows:

(am) *Preferred Vehicle Configuration shall mean a vehicle configuration that takes into account additional variables and the optimal ranges of existing variables, including a vehicle's gross axle weight ratings, grouping weights, spacing between axles, inner and outer bridge wheelbase, tires (number per axle, tire ratings and tire width), and use of self-adjusting air ride suspension, to determine more favorable groupings to be allowed for a specific permit type, and that the Department recognizes as more infrastructure friendly or safer to vehicles or the public.*

Section 2. Section 154-2.4 of Subpart 154-2 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding new paragraphs (m) and (n) to read as follows:

(m.) *F2 Type 9. On all state highways, other than state highways in New York City, a permit may be issued for the operation of a combination of vehicles which have a minimum of 7 axles and a wheelbase of at least 43 feet. The maximum gross weight of the vehicle combination shall not exceed 117,000 pounds, and shall be subject to bridge restrictions. The maximum axle and group weights shall not exceed the following:*

- (i) *any other single axle 25,000 pounds;*
- (ii) *any tandem-axle group 48,000 pounds;*
- (iii) *any tridem-axle group 58,000 pounds; and*
- (iv) *any quad-axle group 63,000 pounds.*

(n.) *For all permit types, consideration to use grouping weights on a permit will be provided to those vehicle or vehicle combinations using air ride suspensions.*

Text of proposed rule and any required statements and analyses may be obtained from: Kenneth S. Dodge, Manager OS/OW Permit Program, Department of Transportation, Central Permit Office, 50 Wolf Rd., First Fl., Albany, NY 12232, (518) 457-1795, e-mail kdodge@dot.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Transportation annually issues approximately 170,000 divisible load overweight permit certificates to over 5000 customers. Since April 2006, the Department has been meeting with customers and with associations that represent the trucking industry as well as holding a number of listening forums in an attempt to identify problems with the existing permitting process for hauling permits.

The trucking industry has been requesting heavier load carrying capacity for a number of years. The Department has been reluctant to grant this request due to the increased damage this would cause to the State's pavements and bridges. Recent research and vehicle developments have introduced a vehicle configuration that could minimize this damage. The newly proposed "Infrastructure Friendly Vehicle" (IFV) configurations would include additional axles while introducing engineering considerations such as limitations on axle spacings and weights to minimize pavement damage.

This engineering analysis is relatively new for pavements. Preliminary results will be used to introduce the initial IFV parameters for the preferred vehicle configuration (PVC). These vehicles will essentially operate with pavement damage factors similar to legally loaded vehicles. The Department has initiated research studies to further refine these results.

The procedures, which the proposed regulations will allow, should give the trucking industry the option of heavier loads and enable the Department to minimize adverse impact to pavements and bridges. It will also enable a more efficient process for approval of permit applications.

The Department has shared these proposed changes with the industry through recent meetings with industry groups, by direct mailing of the proposal to all 5000 divisible load overweight permit customers and by publication on the Department's official website:

<https://www.nysdot.gov/portal/page/portal/transportation-partners/nys-transportation-federation/permits/ny-permits/news>

This proposed revision to 17 NYCRR Subpart 154-2 introduces a new permit type authorized by Vehicle and Traffic Law (§ 385) that will allow the industry to carry heavier loads on preferred vehicle configurations (PVC) reflecting engineering considerations to lessen impacts to pavement and bridges. Based on comments received so far, the Department anticipates that the industry and individual permit applicants will support this proposal and that the Department will receive no substantive comments in opposition. Accordingly, the Department is treating this proposed change as a consensus rule making.

Job Impact Statement

This proposed revision to 17 NYCRR Subpart 154-2 introduces a new permit type authorized by Vehicle and Traffic Law (§ 385) that will allow the industry to carry heavier loads on preferred vehicle configurations (PVC) designed with engineering considerations to protect the pavements and bridges. Since this permit type is new, a job impact statement has not been submitted. The industry will be provided with new employment opportunities and there will be no adverse impact on jobs.