

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Asian Long Horned Beetle Quarantine

I.D. No. AAM-28-07-00018-E
Filing No. 917
Filing date: Aug. 28, 2007
Effective date: Aug. 28, 2007

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

Action taken: Amendment of Part 139 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: The Asian Long Horned Beetle, *Anoplophora glabripennis*, an insect species non-indigenous to the United States, was first detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities detected infestations of this pest in other areas of Brooklyn as well as in and about Amityville, Queens and Manhattan. As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are

described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to establish a quarantine area on Staten Island. This rule contains the needed modification.

The Asian Long Horned Beetle (ALB) is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1.5 inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (½ inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots. They fly for two or three days, during which they feed and mate. To lay eggs, adult females chew depressions in the bark of host trees to lay eggs. One female can lay 35 to 90 eggs. The larvae bore into and feed on the interior of the trees, where they overwinter. The accumulation of coarse sawdust around the base of the infested tree where branches meet the main stem and where branches meet other branches, is evidence of the presence of the borer. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); and Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash), Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk.

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. More than 8,000 infested trees have been removed to date. Chemical treatments are also used to suppress ALB populations with approximately 350,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. As a result, the quarantine imposed by this rule has been determined to be the most effective means of preventing the spread of the Asian Long Horned Beetle. It will help to ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, it does not spread beyond those areas via the movement of infested trees and materials.

The effective control of the Asian Long Horned Beetle within the limited areas of the State where this insect has been found is also important to protect New York's nursery and forest products industry. The failure of states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

Based on the facts and circumstances set forth above the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that the failure to immediately modify the quarantine area and restrict the movement of trees and materials from the areas of the State infested with

Asian Long Horned Beetle could result in the spread of the pest beyond those areas and damage to the natural resources of the State and could result in a federal quarantine and quarantines by other states and foreign countries affecting the entire State. This would cause economic hardship to the nursery and forest products industries of the State. The consequent loss of business would harm industries which are important to New York State's economy and as such would harm the general welfare. Given the potential for the spread of the Asian Long Horned Beetle beyond the areas currently infested and the detrimental consequences that would have, it appears that the rule modifying the quarantine area should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Asian long horned beetle quarantine.

Purpose: To prevent the spread of the beetle to other areas.

Text of emergency rule: Section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new subdivision (d) to read as follows:

(d) *That area in the Borough of Richmond in the City of New York bound by a line beginning at a point along the State of New York and the State of New Jersey border due north of the intersection of Richmond Terrace and South Avenue; then south to the intersection of South Avenue and Richmond Terrace; then south along South Avenue to its intersection with Fahy Avenue; then east along Fahy Avenue to Arlene Street; then south along Arlene Street until it becomes Park Drive North; then south on Park Drive North to its intersection with Rivington Avenue; then east along Rivington Avenue to the intersection of Mulberry Avenue; then south on Mulberry Avenue to its intersection with Travis Avenue; then northwest on Travis Avenue until it crosses Main Creek; then along the west shoreline of Main Creek to Fresh Kills Creek; then along the north shoreline of Fresh Kills Creek to Little Fresh Kills Creek; then along the north shoreline of Little Fresh Kills Creek to the Arthur Kill; then west to the border of the State of New York and the State of New Jersey in the Arthur Kill; then north along the borderline of the State of New York and the State of New Jersey to the point of beginning.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. AAM-28-07-00018-P, Issue of July 11, 2007. The emergency rule will expire October 26, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Robert J. Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Asian Long Horned Beetle.

3. Needs and benefits:

The Asian Long Horned Beetle, *Anoplophora glabripennis*, an insect species non-indigenous to the United States was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in Brooklyn as well as locations in and about Amityville, Queens and Manhattan.

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to establish a new quarantine area on Staten Island. The proposed rule contains the needed modifications.

The Asian Long Horned Beetle (ALB) is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1.5 inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (½ inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots. They fly for two or three days, during which they feed and mate. To lay eggs, adult females chew depressions in the bark of host trees to lay eggs. One female can lay 35 to 90 eggs. The larvae bore into and feed on the interior of the trees, where they overwinter. The accumulation of coarse sawdust around the base of the infested tree where branches meet the main stem and where branches meet other branches, is evidence of the presence of the borer. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); and Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash), Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk.

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. More than 8,000 infested trees have been removed to date. Chemical treatments are also used to suppress ALB populations with approximately 350,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. As a result, the quarantine imposed by this rule has been determined to be the most effective means of preventing the spread of the Asian Long Horned Beetle. It will help to ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, it does not spread beyond those areas via the movement of infested trees and materials.

The effective control of the Asian Long Horned Beetle within the limited areas of the State where this insect has been found is also important to protect New York's nursery and forest products industry. The failure of states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

4. Costs:

(a) Costs to the State government:

None.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Nurseries exporting host material from the quarantine area, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year with a total annual cost of less than \$1,000.

Most shipments will be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantine area may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestations.

The establishment of a quarantine area on Staten Island would affect 15 nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: none.

(ii) It is anticipated that the Department will be able to administer the proposed quarantine with existing staff.

5. Local government mandate:

Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of ½" or more in diameter of host species will require proper handling and disposal, *i.e.*, chipping and/or incineration if such materials are to leave the area under quarantine. An effort is underway to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

6. Paperwork:

Regulated articles inspected and certified to be free of Asian Long Horned Beetle moving from quarantine area will have to be accompanied by a state or federal phytosanitary certificate and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The failure of the State to establish the quarantine on Staten Island where the Asian Long Horned Beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rule making.

9. Federal standards:

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

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business.

The small businesses affected by the establishment of a quarantine area on Staten Island are the nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area. It is estimated that there are 15 such businesses within that area. The local governments involved in the proposed establishment of the quarantine area are the City of New York and the borough of Staten Island.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the proposed quarantine area, in the event that they do, they would be subject to the same quarantine requirements as other regulated parties.

2. Compliance requirements:

All regulated parties in the quarantine area on Staten Island established by this amendment will be required to obtain certificates and limited permits in order to ship regulated articles from that quarantine area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services:

In order to comply with the rule, small businesses and local governments shipping regulated articles from the quarantine area on Staten Island will require professional inspection services, which would be provided by the Department and the USDA.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule:

None.

(b) Annual cost for continuing compliance with the proposed rule:

Nurseries exporting host material from the quarantine area on Staten Island, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments would be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantine area may not move outside that area due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

Local governments shipping regulated articles from the modified quarantine areas would incur similar costs.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. This is done by limiting the quarantine area to only parts of Staten Island where the Asian Long Horned Beetle has been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of the Asian Long Horned Beetle and prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has contacted various representatives of nurseries, arborists, the forestry industry, and local government to discuss the quarantine. It has also had extensive consultation with the United States Department of Agriculture.

The Department is involved in a continuing outreach program involving all of the parties affected by the proposed amendment. The amendment has been discussed with the members of the Department's Plant Industry Advisory Committee, which includes representatives of the various types of regulated parties affected by the rule. In addition, a press release was issued at the time the original quarantine was imposed announcing the steps the State is taking to address the problem presented by the Asian Long Horned Beetle. Department representatives also attended a public meeting in Brooklyn, New York at which these issues were discussed and input was received. This outreach program will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the quarantine area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

The rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that the quarantine area established by this rule is situated on Staten Island, which does not fall within the definition of "rural areas" set forth in section 481(7) of the Executive Law.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The establishment of a quarantine area on Staten Island is designed to prevent the spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the Asian Long Horned Beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry, fruit and maple product industries.

Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$2 billion.

As set forth in the regulatory impact statement, the cost of the rule to regulated parties is relatively small. The responses received during the Department's outreach to regulated parties indicate that the rule will not have a substantial adverse impact on jobs and employment opportunities.

State Commission of Correction

NOTICE OF ADOPTION

Possession of Medication by Inmates

I.D. No. CMC-27-07-00015-A

Filing No. 904

Filing date: Sept. 12, 2007

Effective date: Aug. 28, 2007

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

Action taken: Addition of section 7010.3(c) to Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Possession of medication by inmates.

Purpose: To allow inmates to possess prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalants.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. CMC-27-07-00015-EP, Issue of July 3, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Senior Attorney, Commission of Correction, 80 Wolf Rd., Albany, NY 12205, (518) 485-2346, e-mail: rulemaking@scoc.state.ny.us

Assessment of Public Comment

The State Commission of Correction (Commission) received formal comment from Thomas A. Mitchell, Counsel to the New York State Sheriff's Association, Inc.

1.) The comment indicated support for the proposed amendment which "will help jail administrators and officers to safely maintain the health of inmates in county jails."

Response: The Commission agrees, as this is the main purpose of the proposed amendment.

Department of Correctional Services

EMERGENCY RULE MAKING

Packages and Articles Sent or Brought to Institutions

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

Filing No. 901

Filing date: Aug. 24, 2007

Effective date: Aug. 24, 2007

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

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

Statutory authority: Correction Law, section 112

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

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

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

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

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

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

Subject: Packages and articles sent or brought to institutions.

Purpose: To update procedures consistent with security needs.

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

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

- Subdivision (a).
 - Paragraph (3) restricts received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits;
 - Paragraph (4) defines the value of an article as the actual purchase price, excluding tax, shipping or handling costs;
 - Paragraphs (5) and (6) clarify procedures for disposition of previously received package items which subsequently become disallowed;
 - Paragraph (7) specifies that the department is not responsible for articles damaged in shipping or received in spoiled condition;
 - Paragraph (8) provides for a record of return-to-sender transactions.
 - Subdivision (b).
 - Paragraphs (1) through (4) specify search procedures, including a procedure for handling items of religious significance;
 - Paragraphs (5) and (6) define contraband and articles not permitted and include procedures for disposition;
 - Paragraph (7) prohibits alteration of items once received;
 - Paragraph (8) provides for review and disposition of items withheld by staff because of non-conformance with specifications.
 - Subdivision (d).
 - Paragraph (1) adds procedures for disposition of packages not having return addresses;
 - Paragraph (2) expands procedures for sending a package out of a facility at an inmate's request.
 - Subdivision (e) – limits receipt of art and handicraft supplies.
 - Subdivision (f) – explains procedures for handling packages brought by visitors.
 - Subdivision (g).
 - Paragraph (2) requires that a received article valued at over \$20 must be accompanied by a receipt or bill;
 - Paragraph (4) establishes special watch procedures to guard against importation of contraband in packages addressed to inmates who have been identified with contraband or drug-related misbehavior;
 - Subdivision (h).
 - Paragraph (2) specifies that an inmate who orders a package while under a "loss of package" disciplinary disposition must pay to have it returned to sender.
 - Subdivision (i) provides for disposition of packages received for inmates in SHU.
 - Subdivision (j) provides for processing and forwarding or disposition of packages received for inmates who have been transferred or are temporarily away from a facility.

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

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

§ 724.5 Listing of approved items.

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. COR-24-07-00008-EP, Issue of June 13, 2007. The emergency rule will expire October 22, 2007.

Text of emergency 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

Regulatory Impact Statement

The New York State Department of Correctional Services (DOCS) seeks to repeal Part 724 and adopt a new Part 724 of Title 7, NYCRR.

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

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

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

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

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

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

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

Costs:

a. To State government: None.

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

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

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

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

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

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

Local Government Mandates:

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

Duplication:

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

Alternatives:

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

No other alternatives have been proposed or considered.

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

NOTICE OF ADOPTION

Packages and Articles Sent or Brought to Institutions

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

Filing No. 900

Filing date: Aug. 23, 2007

Effective date: Sept. 12, 2007

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

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

Statutory authority: Correction Law, section 112

Subject: Packages and articles sent or brought to institutions.

Purpose: To update procedures consistent with security needs.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. COR-24-07-00008-EP, Issue of June 13, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

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

Administrative Segregation Admissions

I.D. No. COR-37-07-00005-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 301.4(e) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 70, 112 and 137

Subject: Administrative segregation admissions.

Purpose: To maintain the administrative segregation status of an inmate who is subject to central office review when transferring to another facility.

Text of proposed rule: Section 301.4 (e) of 7 NYCRR is amended as follows:

(e) At any time when deemed appropriate, an inmate may be evaluated and recommended for return to general population at the current facility or transferred to another facility where it is determined the inmate may be programmed into general population. *Nothing in this subdivision shall be construed to terminate the administrative segregation status of an inmate who is subject to central office review in accordance with paragraph (3) of this section upon the inmate's transfer to another facility, absent written authorization from the deputy commissioner for correctional facilities.*

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

The New York State Department of Correctional Services (DOCS) seeks to amend section 301.4(e) of Title 7, NYCRR.

Statutory Authority

Sections 70 and 137 of the Correction Law authorize the department and the commissioner to establish programs of treatment and to provide for such measures as appropriate to promote the safety, security and health of every person in custody and ensure their right to receive humane treatment.

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

Legislative Objective

By vesting the commissioner with this rule making authority, the legislature intended the commissioner to establish rules and regulations to manage those inmates who must be segregated from the general population of inmates for safety and security reasons, to specify procedures for assignment to administrative segregation and or periodic review and possible release from administrative segregation.

Needs and Benefits

The amendment of section 301.4(e) clarifies that when Central Office participates in the periodic review of an inmate's Administrative Segregation status in accordance with section 301.4(d)(3), the inmate's transfer to another facility does not necessarily terminate the inmate's current Administrative Segregation status. Central Office participates in the periodic review of an inmate's Administrative Segregation status when it is believed that the inmate's presence in general population at any of the Department's correctional facilities would pose an undue risk to safety or security. Consequently, there is a need to clarify that, absent direction from the Deputy Commissioner for Correctional Facilities, a new Administrative Segregation hearing is not required upon the transfer of the inmate in order to retain the inmate in Administrative Segregation at his or her new facility.

Costs

- a. To regulated parties: None.
- b. To agency, the state and local governments: None.
- c. Source of information: Department Budget staff.

Local Government Mandates

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

Paperwork

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

Duplication

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

Alternatives

No alternatives are considered feasible. Requiring a new hearing upon the transfer of an Administrative Segregation inmate whose presence in general population at any correctional facility would pose a threat to safety and security, would be duplicative and an unnecessary expenditure of staff time and government resources.

Federal Standards

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

Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules 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, recordkeeping or other compliance requirements on small businesses or local governments. This proposal merely allows an inmate to maintain his administrative segregation status when transferring to another facility.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal merely allows an inmate to maintain his administrative segregation status when transferring to another facility.

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 proposal merely allows an inmate to maintain his administrative segregation status when transferring to another facility.

Education Department

EMERGENCY RULE MAKING

Loan of Instructional Computer Hardware

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

Filing No. 902

Filing date: Aug. 27, 2007

Effective date: Aug. 27, 2007

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

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

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 753(1) and 754(1); and L. 2007, ch. 57, sections 7-a and 7-b

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, to provide for the loan of instructional computer hardware from public school districts to nonpublic school students.

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

The proposed amendment was adopted at the May 21-22, 2007 Regents meeting as an emergency measure, effective May 29, 2007, in order to immediately establish loan and plan procedures under Education Law sections 753 and 754, so that school districts may timely notify nonpublic schools for implementation of statutory requirements in the 2007-2008 school year. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 13, 2007.

Because the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption as a permanent rule by the Board of Regents, after expiration of the 45-day public comment period prescribed by SAPA, is the September 10-11, 2007 Regents meeting. However, the May emergency rule will expire on August 26, 2007, 90 days after its filing with the Department of State on May 29, 2007. A lapse in the rule's effectiveness would disrupt implementation of loans of instructional computer hardware, pursuant to Education Law section 754, to pupils attending nonpublic elementary and secondary schools.

A second emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the May Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Loan of instructional computer hardware.

Purpose: To provide for the loan of instructional computer hardware from public school districts to nonpublic school students.

Text of emergency rule: 1. Section 21.3 of the Rules of the Board of Regents is amended, effective August 27, 2007, as follows:

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

(a) *Lending procedures for computer software.*

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

[(b)] (2) Pupils enrolled in grades kindergarten through 12 in schools in New York State may borrow computer software programs designated for use in any public elementary or secondary school in the State of New York or approved by any school board. Such computer software programs

shall be required for use as a learning aid in a particular class or program. Computer software programs which are religious in nature or content shall not be purchased or loaned by a school district.

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

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

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

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

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

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

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

(1) *Definitions.*

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

(a) *mini-computers;*

(b) *microcomputers;*

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

(d) *telecommunications hardware, including modems;*

(e) *special hardware boards;*

(f) *cables;*

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

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

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

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

(3) *Instructional computer hardware shall be loaned upon the individual written request of nonpublic school students, but such requests shall not be required of students attending public school districts. Such requests*

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

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

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

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

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

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

2. Section 100.12 of the Regulations of the Board of Regents is amended, effective August 27, 2007, as follows:

§ 100.12 Instructional computer technology plans.

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

(b) Each plan shall include:

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-24-07-00025-EP, Issue of June 13, 2007. The emergency rule will expire October 25, 2007.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

The proposed rule is needed to implement the statutory requirements.

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

Education Law section 753, as added by Chapter 57 of the Laws of 2007, provides for an apportionment for approved school district expenses for computer hardware or technology equipment, or for repair of such equipment or staff development for instructional purposes. Such aid shall be provided pursuant to a plan developed by the district that demonstrates, to the satisfaction of the Commissioner, that the instructional computer hardware needs of the district's public and nonpublic school students have been adequately met. Section 100.12, as amended, specifies that each

school district's technology plan including an assurance that the school district has provided for the loan of instructional computer hardware to students legally attending nonpublic schools pursuant to Education Law section 754.

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

COSTS:

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

a. Costs to State government: None.

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

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

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

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

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

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

There are no substantive federal standards that are applicable to this proposal insofar as the proposed rule relates to a State aid allocation for computer hardware or technology equipment, for repair of such equipment, and for staff development for instructional purposes.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small businesses:

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

Local government:

EFFECT OF RULE:

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

COMPLIANCE REQUIREMENTS:

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

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

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

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

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

PROFESSIONAL SERVICES:

None.

COMPLIANCE COSTS:

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

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Economic feasibility is addressed under the Compliance costs section above. The proposed amendment is necessary to implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, and does not impose any additional technological requirements on school districts beyond those inherent in the statute. Education Law section 754, as added by Chapter 57 of the Laws of 2007, requires school authorities to loan instructional computer hardware to an individual or a group of individuals legally attending nonpublic schools located in the district, subject to such rules and regulations as prescribed by the Board of Regents. These requirements are detailed in an amendment to section 21.3 of the Rules of the Board of Regents, which detail loan procedures for computer hardware and software.

MINIMIZING ADVERSE IMPACT:

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

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

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

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

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

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

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

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

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

COSTS:

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

MINIMIZING ADVERSE IMPACT:

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

RURAL AREA PARTICIPATION:

The proposed rule will be submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas as well as the Rural Schools

Association. In addition, guidance memos will be provided to the field outlining changes in the law and posted on the State Aid Management System (SAMS) website, for reference.

Job Impact Statement

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

EMERGENCY RULE MAKING

Universal Prekindergarten Programs

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

Filing No. 903

Filing date: Aug. 27, 2007

Effective date: Aug. 27, 2007

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

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

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

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

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

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

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

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

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

(4) require the Department to prescribe uniform quality standards for universal prekindergarten programs. This section also requires that the regulations of the Commissioner establish minimum curriculum standards to ensure that universal prekindergarten programs include curricula aligned with the State learning standards, that ensures continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve. Further, such regulations must include performance standards for prekindergarten programs, including procedures for assessing the performance of programs and mechanisms for tracking the progress of programs and reporting such progress to parents and the public. In addition, this section provides the Department with the authority to grant a waiver of any inconsistent provisions of the regulations to allow school districts that operated targeted prekindergarten programs in the 2006-2007 school year to continue to operate under the regulations that applied to the targeted prekindergarten program in that year.

The proposed amendment was adopted at the May 21-22, 2007 Regents meeting as an emergency measure, effective May 29, 2007, in order to immediately establish uniform quality standards and other requirements

for universal prekindergarten programs that are consistent with Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, so that affected school districts may timely plan and implement such programs for the 2007-2008 school year pursuant to statutory requirements. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 13, 2007.

Because the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption as a permanent rule by the Board of Regents, after expiration of the 45-day public comment period prescribed by SAPA, is the September 10-11, 2007 Regents meeting. However, the May emergency rule will expire on August 26, 2007, 90 days after its filing with the Department of State on May 29, 2007. A lapse in the rule's effectiveness would disrupt implementation of universal prekindergarten programs under Education Law section 3602-e. It is critical that school districts receive the guidance provided through the emergency rule in order to adjust their school budgets as needed, to recruit and enroll children and to timely prepare their universal prekindergarten grant applications for the 2007-08 school year as required by the statute.

A second emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the May Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Universal prekindergarten programs.

Purpose: To establish uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive process, and facility requirements.

Substance of emergency rule: The Board of Regents has extended for an additional 60 days, effective August 27, 2007, the May 29, 2007 emergency rule that repealed Subpart 151-1 of the Regulations of the Commissioner of Education and promulgated a new Subpart 151-1. The following is a summary of the provisions of the emergency rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-24-07-00027-EP, Issue of June 13, 2007. The emergency rule will expire October 25, 2007.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

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

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

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

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

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

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

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

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

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

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

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

Section 151-1.4 requires:

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

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

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

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

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

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

COSTS:

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

(a) Costs to State government: None.

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

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

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

LOCAL GOVERNMENT MANDATES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PAPERWORK:

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

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

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

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

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

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

were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

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

COMPLIANCE REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

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

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

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

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

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

LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) a budget of proposed expenditures for services.

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

COMPLIANCE COSTS:

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

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

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

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establishing differing requirements or to exempt school districts and eligible agencies from coverage by the rule,

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

RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Universal Prekindergarten Programs

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

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

Revised action: Repeal of Subpart 151-1 and addition of new Subpart 151-1 to Title 8 NYCRR.

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

Subject: Universal prekindergarten programs.

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

Substance of revised rule: The proposed amendment was adopted as an emergency rule at the May and July Regents meetings. Substantial revisions were subsequently made to the proposed rule in response to public comment. The following is a summary of the provisions of the revised rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

settings where the universal prekindergarten program will be located prior to contracting for services.

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

Revised rule compared with proposed rule: Substantial revisions were made in sections 151-1.3(2) and 151-1.4(a).

Text of revised 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: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on June 13, 2007, the following substantial revisions were made to the proposed rule:

The first sentence in section 151-1.3(a)(2) was revised in response to public comment to clarify the intent of the provision by replacing "early literacy and emergent reading program" with "early literacy and emergent reading instruction" so that the sentence now reads: "(2) Each school district operating a prekindergarten program shall provide early literacy and emergent reading instruction based on effective, evidence-based practices."

Section 151-1.4(a) was revised in response to public comment to provide flexibility to allow a district to operate for fewer than 180 days in the year that it first implements a program or for expansion classes in subsequent years. The proposed rule has been revised to require that programs operate ". . . a minimum of 180 days per year; except that districts implementing programs for the first time or expansion classes in other districts may operate a minimum of 90 days, provided that in such instances the aid per prekindergarten pupil shall be reduced by one one-hundred eightieth for each day less than 180 days that such program or expansion class is in session, except that the commissioner may disregard such reduction for any deficiency that may be disregarded in computing total foundation aid pursuant to Education Law section 3604(7) or (8)."

The above revisions require that the "Needs and Benefits" and "Local Government Mandates" sections of the previously published Regulatory Impact Statement be revised as follows:

NEEDS AND BENEFITS:

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

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

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

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

- (1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;
- (2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;
- (3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;
- (4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;
- (5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;
- (6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;

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

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

Section 151-1.4 requires:

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

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

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

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

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

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

LOCAL GOVERNMENT MANDATES:

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

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

- (1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;
 - (2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;
 - (3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;
 - (4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;
 - (5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;
 - (6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;
 - (7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and
 - (8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.
- Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.
- Section 151-1.5(b)(4)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the

amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

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

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

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on June 13, 2007, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The revisions to the proposed rule require that the "Compliance Requirements" section for small businesses and local governments of the previously published Regulatory Flexibility Analysis be revised to read as follows:

COMPLIANCE REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) a budget of proposed expenditures for services.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on June 13, 2007, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the "Reporting, Recordkeeping and other Compliance Requirements and Professional Services" section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Job Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on June 13, 2007, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

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

Assessment of Public Comment

Since publication of Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on June 13, 2007, the State Education Department received the following comments on the proposed rule.

1. COMMENT:

Section 151-1.2(b): Eligible agencies now may include libraries and museums which meet the standards and requirements of this Subpart. Based on the requirements in the Competitive Process 151-1.6(b) 7, 13, 14, 16, libraries and museums cannot qualify as an eligible agency.

DEPARTMENT RESPONSE:

Libraries and museums that met the requirements of Subpart 151-1 have been eligible agencies since inception of the Universal Prekindergarten program. The addition of libraries and museums to this section is a technical revision to clarify that such entities are eligible agencies. The variety and types of programs offered by libraries and museums vary greatly throughout the State. While the libraries and museums in the commenter's area may not meet the above-cited standards, there may be libraries and museums in other locales that do. No change to the proposed rule is required.

2. COMMENT:

Section 151-1.3(a)(2) requires districts operating a prekindergarten program to "provide an early literacy and emergent reading program based on effective, evidence-based instructional practices." Unless there is specific reference to the intent of this regulation, it becomes easy for Districts to misinterpret the word "program" and lead to the use of inappropriate developmentally appropriate practice. The commenter recommends replacing the word "program" with "instruction."

DEPARTMENT RESPONSE:

The Department agrees that the recommendation clarifies the intent of the regulation. The proposed rule has been revised to require school districts operating a prekindergarten program to "provide early literacy and emergent reading instruction based on effective, evidence-based practices."

3. COMMENT:

Section 151-1.3(b)(2) states that "School districts shall use the results of such assessments to annually monitor and track prekindergarten program effectiveness. A program shall be considered effective if the enrolled children demonstrate significant gains, as determined by the Commissioner, in language, cognitive and social skills." The commenter recommended that the term significant gains be defined and that the research that correlates program effectiveness and significant gains in children be shared. The commenter also recommended that, in addition to the selected assessment being reliable and valid, the new regulations must also require that it have a strong emphasis on progress monitoring to determine student growth and development in measurable terms.

DEPARTMENT RESPONSE:

The Department believes that these concerns can be best addressed in guidance.

4. COMMENT:

Section 151-1.3(b)(3) requires school districts to annually report the percentage of children making significant gains and said data shall be made part of a school's performance report to the parents and the public. The commenter recommended that consideration must be given to a child's self-esteem given the fact that the social and emotional development of children is mentioned in the amended regulations. Additionally, four year old children should not be adversely affected by an assessment that determines "significant gains."

DEPARTMENT RESPONSE:

Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, requires that the effectiveness of school districts' prekindergarten programs be reported to parents and the public. The Department recognizes the validity of the concerns expressed and believes that these concerns can be best addressed in guidance.

5. COMMENT:

Section 151-1.3(f) requires fiscal and program oversight of the collaborating eligible agencies. The commenter recommended that a statement must be added to include the oversight of the public schools.

DEPARTMENT RESPONSE:

The Department disagrees with the recommendation. Prekindergarten classrooms operated by the public schools are already subject to the district's fiscal policies and procedures, including oversight and monitoring. No change to the proposed rule is required.

6. COMMENT:

Section 151-1.3(g) requires that professional development be provided based on the instructional needs of children. The commenter recommended that consideration must be given to improving the pedagogical capacity of the adults who deliver instruction to the children. This includes the professional development of the Social Worker as well as the Family Worker.

DEPARTMENT RESPONSE:

The Department agrees that the primary purpose of professional development is to improve the pedagogical capacity of the adults who deliver instruction to children. However, when prioritizing the professional development needs of the adults, efforts should be focused first on improving instruction in those areas where the instructional needs of students is greatest. No change to the proposed rule is required.

7. COMMENT:

Section 151-1.4(d) determines the selection of children. The commenter recommended that clarity is needed here as the new regulations require that the selection process established in the base year of the targeted prekindergarten program may continue to be used to select children to receive universal prekindergarten services.

DEPARTMENT RESPONSE:

The proposed rule is consistent with the provisions of Education Law section 3602-e of Education Law, as amended by Chapter 57 of the Laws of 2007, requiring that districts establish a random selection methodology and permitting districts that operated a Targeted Prekindergarten program in the 2006-2007 school year the option of using the selection methodology established for that program. The Department believes that further clarification is best provided in guidance. No change to the proposed rule is required.

8. COMMENT:

Section 151-1.4(a) requires that programs operate 180 days. The time constraints inherent in this requirement impede the ability of newly implementing districts and those wishing to expand their programs to identify possible collaborators and build the capacity to serve additional children. The commenter recommended that increased flexibility be provided to allow a district to operate for fewer days in the year that it first implements a program or for expansion classes in subsequent years.

DEPARTMENT RESPONSE:

The Department agrees that such flexibility may increase the ability of districts to implement and expand prekindergarten programs. The proposed rule has been revised to require that programs operate ". . . a minimum of 180 days per year; except that districts implementing programs for the first time or expansion classes in other districts may operate a minimum of 90 days, provided that in such instances the aid per prekindergarten pupil shall be reduced by one one-hundred eightieth for each day less than 180 that such program or expansion class is in session, except that the commissioner may disregard such reduction for any deficiency that may be disregarded in computing total foundation aid pursuant to Education Law section 3604(7) or (8)."

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-37-07-00002-E

Filing No. 898

Filing date: Aug. 22, 2007

Effective date: Aug. 22, 2007

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

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

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

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

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

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

Subject: Criminal history record check.

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 19, 2007.

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

Regulatory Impact Statement

Statutory Authority:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified

home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

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

Legislative Objectives:

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

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 and Chapters 331 and 673 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

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

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

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

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

the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

COSTS:

Costs to State Government:

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

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check, and a \$22 fee for a national criminal history record check with a \$2 administrative processing fee by the Division. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

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

Costs to Local Governments:

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

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

Costs to Private Regulated Parties:

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

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are,

for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

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

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

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

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional "ink and roll" process. Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. Two cards would then need to be

mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint cards is difficult to read.

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

Minimizing Adverse Impact:

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

Small Businesses and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect of Rule:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by

the State Legislature. (See "Regulatory Impact Statement – Costs to State Government")

Minimizing Adverse Impact:

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

Rural Area Participation:

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

Job Impact Statement

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

**EMERGENCY
RULE MAKING**

Payment of Nursing Services Provided to Medically Fragile Children

I.D. No. HLT-37-07-00003-E

Filing No. 899

Filing date: Aug. 22, 2007

Effective date: Aug. 22, 2007

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

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

Statutory authority: Social Services Law, section 363-a

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

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

Subject: Payment for nursing services provided to medically fragile children.

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 19, 2007.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

Effective January 1, 2007, rates of payment for private duty nursing services provided to medically fragile children were increased to ensure the availability of a sufficient number of qualified providers to deliver services to these children in the community setting. Previously, providers were reimbursed at the hourly nursing services rate established for their geographic area, without regard to the relative acuity of the pediatric non-institutional population, the corresponding intensity of continuous medical intervention and supervision necessary to sustain these children safely in the community setting, or a shortage of qualified providers. The need for continuous coverage by nurses possessing the specialized training and experience these cases require often resulted in a shortage of available qualified providers sufficient to ensure service delivery in a geographic area. The increased rate of payment will facilitate the recruitment and retention of qualified private duty nurses by providing adequate financial incentive to attract and retain skilled providers sufficiently qualified to

meet the complex medical needs of these children. The proposed regulatory amendment requires providers to certify to the Department their requisite training and experience in order to receive the enhanced rate, to ensure that only qualified providers are recruited. Social Services Law Section 367-r requires the Department to consider several factors in establishing the enhanced rate, including the case mix adjustment factor used for AIDS home care program services. The proposed regulatory amendment calculates the enhanced rate as a thirty percent (30%) add-on to the provider's standard nursing services rate, which is equivalent to using the AIDS home care case mix adjustment factor. Because the entire population of pediatric patients receiving continuous at-home private duty nursing services is by definition medically fragile, the regulation provides for payment of the enhanced rate for such services when provided to any Medicaid enrollee under age 21 in a community setting.

Costs:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Office of Mental Health

NOTICE OF ADOPTION

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-27-07-00002-A

Filing No. 897

Filing date: Aug. 22, 2007

Effective date: Sept. 12, 2007

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

Subject: Medical assistance payment for outpatient programs.
Purpose: To increase certain Medicaid rate schedules and make other changes consistent with the enacted 2005-06 and 2006-07 State budgets.
Text or summary was published in the notice of emergency/proposed rule making, I.D. No. OMH-27-07-00002-EP, Issue of July 3, 2007.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Article VII Proceedings by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-30-06-00009-A
Filing date: Aug. 23, 2007
Effective date: Aug. 23, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order approving Consolidated Edison Company of New York, Inc.'s request for waivers in connection with the application for a certificate of environmental compatibility and public need for the M29 transmission line project.

Statutory authority: Public Service Law, sections 4(1) and 122(1)

Subject: Filing requirements in art. VII proceeding concerning the submission of the environmental management and construction plan.

Purpose: To approve request for waivers.

Substance of final rule: The Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s request for waivers in connection with its application for a Certificate of Environmental Compatibility and Public Need for the M29 Transmission Line Project, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (06-T-0710SA1)

NOTICE OF ADOPTION

Lightened Regulation as an Electric Corporation by Jordanville Wind, LLC

I.D. No. PSC-51-06-00016-A
Filing date: Aug. 23, 2007
Effective date: Aug. 23, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order approving the request of Jordanville Wind, LLC for a certificate of public convenience and necessity, and providing for lightened regulation of it as an electric corporation in connection with a wind energy generating project.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Request by Jordanville Wind, LLC for lightened regulation as an electric corporation.

Purpose: To approve Jordanville Wind, LLC's request in connection with the construction and operation of an electric generating facility.

Substance of final rule: The Commission approved the request of Jordanville Wind, LLC, for a Certificate of Public Convenience and Necessity, and for lightened regulation of it as an electric corporation in connection with a wind energy generating project to be located in the Towns of Warren and Stark, Herkimer County, New York, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (06-E-1424SA1)

NOTICE OF ADOPTION

Stock Purchase and Other Regulatory Requirements by National Grid, plc, et al.

I.D. No. PSC-01-07-00032-A
Filing date: Aug. 23, 2007
Effective date: Aug. 23, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order approving, with conditions, the joint petition of National Grid, plc, National Grid, USA, Inc., Niagara Mohawk Power Corporation, KeySpan Corporation and its jurisdictional affiliates for the acquisition by National Grid, plc of the stock of KeySpan Corporation and other regulatory authorizations.

Statutory authority: Public Service Law, sections 66(12), 70, 99, 100 and 110

Subject: Stock purchase and other regulatory authorizations.

Purpose: To approve the transfer of stock of KeySpan Corporation to National Grid, plc and provide other regulatory authorizations.

Substance of final rule: The Public Service Commission adopted an order approving, with conditions, the joint petition of National Grid, plc, National Grid, USA, Inc., Niagara Mohawk Power Corporation, KeySpan Corporation and its Jurisdictional Affiliates for the acquisition by National Grid, plc of the stock of KeySpan Corporation and other regulatory authorizations, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (06-M-0878SA1)

NOTICE OF ADOPTION

Direct Current Charges by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-07-00007-A
Filing date: Aug. 22, 2007
Effective date: Aug. 22, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order approving Consolidated Edison Company of New York, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 9—Electricity, P.S.C. No. 2—Retail Access, Power Authority of the State of New York No. 4 and Economic Development Delivery Service No. 2.

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

Subject: Direct current service.

Purpose: To terminate direct current service.

Substance of final rule: The Public Service Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s request to terminate direct current service, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0572SA1)

NOTICE OF ADOPTION

Gas Curtailment Policies and Procedures

I.D. No. PSC-16-07-00025-A

Filing date: Aug. 23, 2007

Effective date: Aug. 23, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order regarding gas curtailment guidelines and requirements.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3) and 66(1), (2), (2-a), (3), (8), (12) and 66-a

Subject: Gas curtailment guidelines and requirements for the allocation of gas supply during periods of gas shortages.

Purpose: To adopt gas curtailment guidelines and requirements.

Substance of final rule: The Commission adopted an order regarding gas curtailment guidelines and requirements, and directed local distribution companies to file amendments to their gas tariff schedules consistent with the Gas Curtailment Guidelines, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-0059SA2)

NOTICE OF ADOPTION

Tax Refund by Verizon New York Inc.

I.D. No. PSC-22-07-00013-A

Filing date: Aug. 23, 2007

Effective date: Aug. 23, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order approving the petition of Verizon New York Inc. (Verizon) to retain \$2.5 million of the regulated intrastate portion of a \$3.9 million tax refund received from the City of New York.

Statutory authority: Public Service Law, section 113(2)

Subject: Determination of the disposition of a tax refund received by Verizon.

Purpose: To approve the petition by Verizon to retain that portion of a tax refund allocated to its regulated, intrastate New York operations.

Substance of final rule: The Commission adopted an order approving the petition of Verizon New York Inc. to retain \$2.5 million of the regulated intrastate portion of a \$3.9 million tax refund received from the City of New York for the tax year 2006-07.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-C-0487SA1)

NOTICE OF ADOPTION

Reallocation of System Benefits Charge Funds by New York State Energy Research and Development Authority

I.D. No. PSC-26-07-00018-A

Filing date: Aug. 28, 2007

Effective date: Aug. 28, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order directing reallocation of up to \$3 million of System Benefits Charge (SBC) funds to finance the start up costs for the regional greenhouse gas initiative (RGGI).

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

Subject: Reallocation of up to \$3 million of SBC funds to finance the start up costs for the RGGI.

Purpose: To authorize the reallocation of \$3 million of SBC funds to finance the initial development of a regional organization to carry out the RGGI.

Substance of final rule: The Public Service Commission adopted an order directing reallocation of up to \$3 million of System Benefits Charge (SBC) funds to finance the start up costs for the Regional Greenhouse Gas Initiative (RGGI) and to seek recovery of such funds in accordance with the Department of Environmental Conservation rules regarding RGGI once the auction of emission allowances begins and to update by October 1, 2007 its SBC Operating Plan and Budget, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-M-0090SA3)

NOTICE OF ADOPTION

Direct Current Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-07-00010-A

Filing date: Aug. 22, 2007

Effective date: Aug. 22, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order approving Consolidated Edison Company of New York, Inc.'s request to

make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 9.

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

Subject: Direct current service.

Purpose: To approve the termination of direct current service.

Substance of final rule: The Public Service Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s request to terminate direct current service, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-E-0690SA1)

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

Submetering of Electricity by Site 16/17 Development, LLC

I.D. No. PSC-37-07-00006-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Site 16/17 Development, LLC, to submeter electricity at One and Two River Terrace, Battery Park City, New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Site 16/17 Development, LLC, to submeter electricity at One and Two River Terrace, Battery Park City, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Site 16/17 Development, LLC, to submeter electricity at One and Two River Terrace, Battery Park City, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(07-E-0931SA1)

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

Submetering of Electricity by 343 LLC

I.D. No. PSC-37-07-00007-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 343 LLC to submeter electricity at 343 Fourth Ave., Brooklyn, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 343 LLC to submeter electricity at 343 Fourth Ave., Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 343 LLC to submeter electricity at 343 Fourth Avenue, Brooklyn, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(07-E-0955SA1)

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

Submetering of Electricity by 170 East 77th 1 LLC, et al.

I.D. No. PSC-37-07-00008-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 170 East 77th 1 LLC, 170 East 77th 2 LLC, 170 East 77th 3 LLC, 170 East 77th 4 LLC, 170 East 77th 5 LLC, 170 East 77th 6 LLC, and 170 East 77th Realty Group LLC to submeter electricity at 170 E. 77th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 170 East 77th 1 LLC, 170 East 77th 2 LLC, 170 East 77th 3 LLC, 170 East 77th 4 LLC, 170 East 77th 5 LLC, 170 East 77th 6 LLC, and 170 East 77th Realty Group LLC to submeter electricity at 170 E. 77th St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 170 East 77th 1 LLC, 170 East 77th 2 LLC, 170 East 77th 3 LLC, 170 East 77th 4 LLC, 170 East 77th 5 LLC, 170 East 77th 6 LLC, and 170 East 77th Realty Group LLC to submeter electricity at 170 East 77th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(07-E-0960SA1)

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

Dutch Hill Project by Canandaigua Power Partners II, LLC

I.D. No. PSC-37-07-00009-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, the petition of Canandaigua Power Partners II, LLC (CPP II) for an order approving financing and providing for lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69 and 110

Subject: CPP II requests lightened regulation as an electric corporation and for financing approval of up to \$80 million.

Purpose: To consider the requests in connection with the development of the Dutch Hill Project, a wind-powered generating facility.

Substance of proposed rule: In a petition filed August 21, 2007 Canandaigua Power Partners II, LLC (the Company) seeks lightened regulation as an electric corporation authorized in Case 07-E-0138 to construct and operate the Dutch Hill Project. The Company also requests financing approval of up to \$80 million, including the flexibility to change financing entities and terms, and to enter into a sale/leaseback agreement with the Steuben County Industrial Development Agency without further Public Service Commission approval.

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

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

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

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

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

(07-E-1003SA1)

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

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

I.D. No. PSC-37-07-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12 to become effective Dec. 1, 2007.

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

Subject: Service Classification No. 15—distributed generation commercial and industrial.

Purpose: To revise Central Hudson's commercial and industrial distributed generation rates.

Substance of proposed rule: On August 23, 2007, Central Hudson Gas & Electric Corporation (Central Hudson) filed a proposed tariff amendment to revise its commercial and industrial distributed generation rates. The revised rates are filed pursuant to Commission order issued and effective July 24, 2006 in Case 02-M-0515 and have a proposed effective date of December 1, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson's proposed tariff revision.

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.

(02-M-0515SA18)

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

Energy Efficiency Portfolio Standard; Fast Track

I.D. No. PSC-37-07-00011-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 has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas energy efficiency portfolio standard. Within this proceeding, the commission is considering adopting recommendations for a number of "fast-track" energy efficiency programs that can be implemented quickly and cost-effectively, in order to expedite attainment of energy savings, while the planning process to develop the energy efficiency portfolio standard is underway.

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

Subject: The commission is considering adopting recommendations for energy efficiency programs that can be implemented quickly and cost-effectively, in order to expedite attainment of energy savings, while the planning process to develop an energy efficiency portfolio standard is underway.

Purpose: To consider whether the commission should adopt general principles to guide the process of creating and implementing the EPS.

Substance of proposed rule: The Public Service Commission has instituted a proceeding, in Case 07-M-0548, to develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas Energy Efficiency Portfolio Standard. Within this proceeding, the Commission is considering adopting or recommending a number of "fast-track" energy efficiency programs that can be implemented quickly and cost-effectively, in order to expedite attainment of energy savings, while the planning process to develop the Energy Efficiency Portfolio Standard is underway.

Programs being considered for adoption or recommendation by the Commission include: rebates for efficient lighting, appliance, heating and air-conditioning equipment; expansion of EnergyStar buildings programs; building retrofits for energy efficiency; incentives to homeowners, landlords and contractors for energy-efficient construction; expansion of low-income weatherization and efficiency programs, and industrial process improvements for energy efficiency.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-M-05448SA3)

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

Energy Efficiency Portfolio Standard; General Principles

I.D. No. PSC-37-07-00012-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 has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas energy efficiency portfolio standard (EPS). In the context of this proceeding, the commission is considering adopting general principles to guide the process of creating and implementing the EPS.

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

Subject: The commission is considering adopting recommendations for energy efficiency programs that can be implemented quickly and cost-effectively, in order to expedite attainment of energy savings, while the planning process to develop an energy efficiency portfolio standard is underway.

Purpose: To consider whether the commission should adopt general principles to guide the process of creating and implementing the EPS.

Substance of proposed rule: The Public Service Commission has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas Energy Efficiency Portfolio Standard. In the context of this proceeding, the Commission is considering adopting general principles to guide the process of creating and implementing the EPS.

The general principles being considered by the Commission may govern or concern energy costs; relationships between efficiency initiatives and the environment; classes of beneficiaries; market transformation strategies; building system efficiencies; degree of complexity for programs in the EPS; roles of market participants; customer and utility incentives; retail and manufacturing partnerships; partnerships between energy efficiency program providers and other entities; education and outreach; and evaluation and monitoring.

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

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

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

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

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

(07-M-0548SA4)

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

Energy Efficiency Portfolio Standard; Natural Gas Surcharge

I.D. No. PSC-37-07-00013-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 has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas energy efficiency portfolio standard. In this proceeding, the commission is considering establishing a natural gas surcharge to fund natural gas efficiency programs.

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

Subject: The commission is considering adopting recommendations for energy efficiency programs that can be implemented quickly and cost-

effectively, in order to expedite attainment of energy savings, while the planning process to develop an energy efficiency portfolio standard is underway.

Purpose: To consider whether the commission should establish a natural gas surcharge to fund natural gas efficiency programs.

Substance of proposed rule: The Public Service Commission has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas Energy Efficiency Portfolio Standard. In this proceeding, the Commission is considering establishing a natural gas surcharge to fund natural gas efficiency programs. This surcharge would be applied to customer bills, and may be collected on a volumetric basis from all firm customers.

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

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

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

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

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

(07-M-0548SA5)

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

Energy Efficiency Portfolio Standard; Electric System Benefit Charge Increase

I.D. No. PSC-37-07-00014-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 has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas energy efficiency portfolio standard. In this proceeding, the commission is considering increasing the electric system benefits charge (SBC) in order to fund a number of "fast track" energy efficiency programs which may be adopted or recommended in order to expedite attainment of this proceeding's energy efficiency goals.

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

Subject: The commission is considering adopting recommendations for energy efficiency programs that can be implemented quickly and cost-effectively, in order to expedite attainment of energy savings, while the planning process to develop an energy efficiency portfolio standard is underway.

Purpose: To consider whether the commission should order that the electric SBC be increased in order to fund a number of "fast track" energy efficiency programs which may be adopted or recommended in order to expedite attainment of this proceeding's energy efficiency goals.

Substance of proposed rule: The Public Service Commission has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas Energy Efficiency Portfolio Standard. In this proceeding, the Commission is considering increasing the electric System Benefit Charge (SBC) in order to fund a number of "fast track" energy efficiency programs which may be adopted or recommended in order to expedite attainment of this proceeding's energy efficiency goals.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-M-0548SA6)

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

Preferred Stock, Bonds and Other Forms of Indebtedness by New York State Electric & Gas Corporation

I.D. No. PSC-37-07-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of New York State Electric & Gas Corporation authorizing the issuance of long-term indebtedness, preferred stock and hybrid securities, to enter into and borrow under revolving credit facilities and to enter into derivative instruments to manage interest rate risk and other financial exposure.

Statutory authority: Public Service Law, section 69

Subject: Issuance of and sale of preferred stock, bonds and other forms of indebtedness.

Purpose: To permit New York State Electric & Gas Corporation to finance transactions for purposes authorized under Public Service Law, section 69.

Substance of proposed rule: The Commission is considering whether to approve or deny in whole or in part a petition of New York State Electric & Gas Corporation authorizing the issuance of long-term indebtedness, preferred stock and hybrid securities, to enter into and borrow under revolving credit facilities and to enter into derivative instruments to manage interest rate risk and other financial exposure.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-M-0891SA1)

Department of State

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

Cremation Certification Course

I.D. No. DOS-37-07-00001-P

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

Proposed action: Addition of Part 204 to Title 19 NYCRR.

Statutory authority: Not-for-Profit Corporation Law, section 1517(j)

Subject: Approval of cremation certification course.

Purpose: To establish the training and course requirements for the maintenance and operation of crematories within the State.

Text of proposed rule: A new Part 204 is added to Title 19 NYCRR to read as follows:

Section 204.1. Purpose. Paragraph (j) of section 1517 of the Not-for-Profit Corporation Law, as enacted by Chapter 579 of the Laws of 2006, empowers the Division of Cemeteries to certify an organization seeking to make application for approval to conduct a cremation certification course of study. In furtherance of its statutory mandate, the Division of Cemeteries has adopted these rules and regulations to establish the training and course requirements for the maintenance and operation of crematories within the State, including but not limited to subjects for study, attendance, examinations and certificate of completion.

Section 204.2. General requirements.

(a) A crematory shall ensure that, on or after October 15, 2007, all employees operating crematory equipment have attended cremation classes and obtained the certificate required by this Part. No employee shall be allowed to operate any cremation equipment until he or she has met the requirements of this Part. Proof of such employee certification must be posted in the crematory and available for inspection at any time.

(b) No certificate or renewal certificate to operate a crematory shall be issued to any crematory employee on or after October 15, 2007 unless such employee completes a minimum of 8 hours of cremation certification classes and passes a written examination.

(c) No offering of a course of study in the field of cremation operation for purposes of compliance with this Part shall be acceptable for credit unless such course of study has been approved by the Division of Cemeteries.

(d) All new crematory employees whose function is to conduct the daily operations of the cremation process must be certified within 1 year of employment or any reclassification as a crematory operator. No employee shall be allowed to conduct the daily operations of the cremation process until they have completed the certification course, passed the written take home examination and possess a certificate of completion. Any employee of a crematory required to be certified under this Part and retained prior to October 15, 2007 shall be certified within 1 year of such date. Renewal of such certification shall be completed every five years from the date of certification.

Section 204.3. Approved entities. Cremation certification courses may be given by an organization approved by the Division of Cemeteries. No organization seeking approval as a cremation certification course provider shall be affiliated or associated with, owned, operated or controlled by a funeral entity.

Section 204.4. Request for approval of course of study. (a) Applications for approval to conduct a cremation certification course of study satisfying the requirements of this Part shall be made at least 60 days before the proposed course is to be conducted. The application shall be prescribed by the Division to include the following:

(1) name and business address of the organization that will present the course;

(2) if the organization is a partnership, the names and home addresses of all the partners of the entity;

(3) if the organization is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;

(4) the name, business address, telephone number, resume and qualifications of each educational provider who will be teaching and grading the course for the organization;

(5) regional or geographic locations where classes will be conducted;

(6) description of materials that will be distributed;

(7) final examination to be presented for the certification course, including the answer key;

(8) procedure for taking attendance; and

(9) an outline of the course content and the number of hours devoted to each subject.

(b) Educational provider qualification. Each educational provider must be qualified as follows:

(1) Is eighteen years of age or over and of good moral character;

(2) Holds an associates degree in mortuary science or holds a high school diploma or its equivalent and possesses over five years experience in crematory operation;

(3) Possesses instructional experience, academic achievement, and specialty or technical experience in the field of cremation;

(4) Is capable of administering and grading written examinations following the crematory certification course.

Section 204.5. Subjects of study for crematory operator certification course. The certification course shall be divided into two subject matter areas. One subject matter area will address the New York statutes and regulations. Such statutes shall include all applicable sections of Article 15 of the Not-for-Profit Corporation Law (N-PCL) relating to cremations with an emphasis on N-PCL 1517 and the New York State Public Health Law sections 3441, 4145, 4200, 4201, 4202, 4210(a), 4216, and 4218. Such regulations shall include Part 203 of the New York Code, Rules and Regulations (NYCRR) and Part 219-4 of the New York State Department of Environmental Conservation Air Quality Regulations. The approved organization shall devote 20% of the total time allotted for the course to the New York statutes and regulations.

The other subject matter area of the course shall address the general and technical aspects of crematory operations. The subject matter area shall include but not be limited to the cremation process, cremation equipment, operation of cremation chamber, cremation terminology, crematory operator safety, and the identification of cremated human remains. The approved organization shall devote 80% of the total time allotted for the course to the general and technical aspects of crematory operations.

Section 204.6. Computation of instruction time. The certification course for crematory employees shall be a 1 day course for a total of a minimum of 8 hours of instruction to be provided by the approved organization.

Section 204.7. Attendance and examinations.

(a) No applicant to receive certification as a crematory employee shall receive certification if he or she is absent from the class room for a period totaling more than 10% of the time during any instructional period. No crematory employee shall be absent from the class room except for a reasonable and unavoidable cause.

(b) Any crematory employee who fails to attend the required scheduled class hours may, at the discretion of the approved organization, make up the missed subject matter during subsequent courses presented by an approved organization.

(c) Final examinations may only be taken by a crematory employee who has satisfied the attendance requirement.

(d) The final examination shall be a take home examination in which each employee must attain a score of 70% in order to obtain certification as a crematory operator. A failing grade on the final exam shall constitute failure of the course. All final exams are to be reviewed and graded by the approved organization and a copy of all tests with scores shall be provided to the Division of Cemeteries.

(e) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the Division, may file a request to the Division for review and evaluation. Evidence of satisfactory course completion must be submitted by the applicant.

Section 204.8. Facilities. Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course. Such facilities shall be pre-approved by the Division.

Section 204.9. Examination requirement and record retention. (a) All approved organizations shall retain the attendance records, the final examinations and a list of crematory employees who successfully complete each certification course for a period of five years after completion of each course. All such documents shall during normal business hours be available for inspection by authorized representatives of the Division of Cemeteries.

(b) All examinations required for certification shall be in the form of a written take home examination and shall be returned to the educational provider within two weeks after distribution.

Section 204.10. Change in approved course of study. There shall be no change or alteration in any approved course of study of any subject or in any instruction staff or provider without prior written notice and approval by the Division of Cemeteries.

Section 204.11. Auditing. A duly authorized representative of the Division of Cemeteries may audit any course offered, and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

Section 204.12. Suspensions and denials of course approval. Within 30 days after the receipt of the application for approval of an offering, the Division of Cemeteries shall inform the organization as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering. The Division may deny, suspend, or revoke the approval of a certification course of an organization, if it is determined that they are not in compliance with the

law and rules, or if the offering does not adequately reflect and present current cremation knowledge as a basis for a level of cremation practice.

Section 204.13. Certificate of completion. Evidence of successful completion of the course must be furnished to each crematory employee in certificate form. The certificate must indicate the following: name of the cemetery corporation; Crematory Operator Certification Course; a statement that the employee, who shall be named, has satisfactorily completed a course of study in the cremation subjects approved by the Division of Cemeteries in accordance with the provisions of Chapter 579 of the Laws of 2006, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The certificate must be signed by the approved organization and dated, and must have affixed thereto the official seal of the approved organization. Copies of such certification shall be filed with the Division of Cemeteries at 41 State Street, Albany, New York.

Section 204.14. Fees. Each approved organization shall establish the registration fee for the certification course offered.

Text of proposed rule and any required statements and analyses may be obtained from: Nate Hamm, Department of State, 41 State St., Albany, NY 12231 (518) 474-6740, e-mail: dos.sm.InetLegl@dos.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority: Section 1504 (c) of the Not-for-Profit Corporation Law authorizes the Cemetery Board to adopt reasonable rules and regulations for the proper administration of the Public Cemetery Corporations Law. N-PCL section 1517(j) as added by Chapter 579 of the Laws of 2006 authorizes the Division of cemeteries to certify an organization seeking to make application for approval to conduct a cremation certification course of study.

2. Legislative Objectives: The legislative intent of Chapter 579 of the Laws of 2006 pertaining to the regulation of crematories, is to protect the well-being of our citizens, to promote the public welfare and to prevent crematories from falling into disrepair and dilapidation and becoming a burden upon the community, and in furtherance of the public policy of this State that crematories shall be conducted on a non-profit basis for the mutual benefit of the public therein.

3. Needs and Benefits: This regulation is needed to provide crematory employees with a standardized course of instruction in the operation and maintenance of crematories throughout the State. The Division of Cemeteries must approve the organization or entity seeking to be a cremation certification course provider. Upon completion of the course and after passing a written examination each crematory employee will receive a cremation certification allowing such employees to conduct the daily operations of the cremation process. The regulation also sets forth the criteria to be used when an organization or entity seeks to make application to be a course provider. No organization seeking approval as a cremation certification course provider shall be affiliated or associated with, owned, operated or controlled by a funeral entity. Under the Not-for-Profit Corporation Law § 1506-a, also known as the anti-combination statute, was enacted to prevent funeral entities from having any involvement in the operation, maintenance, or the cross marketing of goods and services with a cemetery corporation. This regulation would prevent a funeral entity from making an application to the Division of Cemeteries to be a course provider to conduct a cremation certification course of study.

The regulation further provides for the subjects of study, attendance, examinations and certification of completion requirements. The estimated cost to attend the certification course per crematory employee may range from \$150.00 to \$450.00. The Division of Cemeteries shall not approve the fees to be charged by the approved course provider. As a matter of policy the Division believes that it would be inappropriate to regulate the fee charged for the certification course since it does not want to be held accountable by the crematory industry for setting a fee that may be cost prohibitive from the perspective of the crematory operators. Based upon that policy decision, the Division feels that it is appropriate for the course provider to set their own fee based upon the current market price for the certification course being offered.

4. Costs: There are no costs to state agencies.

In terms of cemetery corporations that own and operate crematories in the State there will be a cost to certify their employees whose function is to conduct the daily operations of the cremation process. Any crematory employee retained prior to the effective date of the enactment of Chapter 579 of the Laws of 2006 must be certified by October 15, 2007. Any new employees of a crematory hired after October 15, 2007 must be certified

within one year of their employment. Renewal of such certification must be completed every five years from the date of certification. The approved organization or entity shall establish the registration fee for the certification course offered. Each cemetery corporation will have to pay the approved fee to certify those crematory employees who will conduct cremations. The estimated cost to attend the certification course per crematory employee may range from \$150.00 to \$450.00.

5. Local Government Mandates: The proposal does not require any local government mandates.

6. Paperwork: The proposal does require the approved organization or entity to provide the Division of Cemeteries with a copy of all tests and scores upon completion of the course. Copies of all certifications shall be filed by the approved organization or entity with the Division of Cemeteries. Entities interested in providing the course must submit, at least 60 days prior to the start of the course, an application and specified course documentation to the Division of Cemeteries for approval. The Division will provide approval or disapproval within 30 days of such submission. The course provider must present each successful participant with a certificate form that includes an official signature and seal of such organization, and file copies of those forms with the Division of Cemeteries. In addition, the course provider shall retain attendance records, final examinations and a list of certified employees for a period of five years after course completion. The proposal does not require any new paperwork or reporting requirements for the cemetery corporations that own and operate crematories. Proof of all certifications must be posted in the crematory and available for inspection by the Division at anytime.

7. Duplication: This proposal does not conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The certification course will be presented as a one day course. Discussions were held to provide the course in a day and a half format but due to cost concerns the one day format was implemented. The regulation also provides that the final examination will be a take home examination as opposed to an on site examination after completing the course. The take home examination was implemented primarily for cost concerns because an on site examination would have required an additional half day to the structure of the course. In addition, the regulation allows for any entity to make application to the Division of Cemeteries to provide the certification course provided that such entity meets the criteria for approval of a course of study. It is anticipated that those approved entities will provide the course on multiple days in different regions of the state to accommodate those crematories with multiple employees and smaller crematories with only one or two employees thus avoiding a situation wherein a crematory may have to close its operation for a day or two to meet the certification requirements.

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

10. Compliance Schedule: The regulations will apply to all crematory employees employed on or after October 15, 2007. The certification course will involve both the NYS Department of State (DOS) and the NYS Department of Environmental Conservation (DEC). The DOS will provide a certification course related to the statutory provisions that were enacted in Chapter 579 of the Laws of 2006. The DEC will provide a separate certification course related to air pollution control requirements for crematories. The DEC through the Environmental Facilities Corporation has conducted a survey to determine the location and the number of courses needed to comply with the law. The projected plan is to offer three separate regional testing sites on multiple days in order to meet the needs of the crematory operators and their employees. In addition, DOS and DEC held an informational meeting on April 12, 2007 by inviting all the crematory owners within the state and the New York State Association of Cemeteries (NYSAC) to discuss the proposed regulation. The meeting proved to be successful in that it was well attended and many questions that were raised regarding the proposed regulation were clarified at the meeting. After the April meeting the proposed regulation was presented to NYSAC for their comments. The regulation was presented to the NYSAC cremation committee for review. The committee recommended that several changes to the proposed regulation be made and those changes have been incorporated into the proposed regulation as currently submitted. NYSAC does not oppose the proposed regulation as submitted since all their changes to the regulation have been incorporated. The Department of State intends to begin accepting applications from interested organizations that have an interest in teaching the certification course once the regulation has been approved.

Regulatory Flexibility Analysis

1. Effect on small businesses: There are approximately 50 crematories throughout the State that are under the jurisdiction of the Division of Cemeteries. There are an estimated 200 crematory employees who are presently employed as crematory operators in the State and who must be certified on or before October 15, 2007.

2. Compliance requirements: All cemetery corporations that own and operate crematories in the State must insure that all their current crematory employees must be certified on or before October 15, 2007. Any new employees hired after October 15, 2007 must be certified within one year from their date of employment. Renewal of such certification must be completed every five years from the date of certification. Entities interested in providing the course must submit, at least 60 days prior to the start of the course, an application and specified course documentation to the Division of Cemeteries for approval. The Division will provide approval or disapproval within 30 days of such submission. The course provider must present each successful participant with a certificate form that includes an official signature and seal of such organization, and file copies of those forms with the Division of Cemeteries. In addition, the course provider shall retain attendance records, final examinations and a list of certified employees for a period of five years after course completion.

3. Professional services: The regulation shall not require cemetery corporations to utilize professional services to comply with the regulation.

4. Compliance costs: The estimated cost to attend the certification course per crematory employee may range from \$150.00 to \$450.00. The Division of Cemeteries shall not approve the fees to be charged by the approved course provider. As a matter of policy the Division believes that it would be inappropriate to regulate the fee charged for the certification course since it does not want to be held accountable by the crematory industry for setting a fee that may be cost prohibitive from the perspective of the crematory operators. Based upon that policy decision, the Division feels that it is appropriate for the course provider to set their own fee based upon the current market price for the certification course being offered.

5. Economic and technological feasibility: It is economically and technologically feasible for cemetery corporations to comply with the regulation.

6. Minimizing adverse impact: This regulation will provide a degree or level of attainment for the training and certification requirements of all crematory employees whose function is to conduct the daily operations of the cremation process throughout the State. The regulation will apply uniformly to all crematories across the State and should not impose any adverse or disparate impact.

7. Small business and local government participation: The certification course will involve both the NYS Department of State (DOS) and the NYS Department of Environmental Conservation (DEC). The DOS will provide a certification course related to the statutory provisions that were enacted in Chapter 579 of the Laws of 2006. The DEC will provide a separate certification course related to air pollution control requirements for crematories. The DEC through the Environmental Facilities Corporation has conducted a survey to determine the location and the number of courses needed to comply with the law. The projected plan is to offer three separate regional testing sites on multiple days in order to meet the needs of the crematory operators and their employees. In addition, DOS and DEC held an informational meeting on April 12, 2007 by inviting all the crematory owners within the state and the New York State Association of Cemeteries (NYSAC) to discuss the proposed regulation. The meeting proved to be successful in that it was well attended and many questions that were raised regarding the proposed regulation were clarified at the meeting. After the April meeting the proposed regulation was presented to NYSAC for their comments. The regulation was presented to the NYSAC cremation committee for review. The committee recommended that several changes to the proposed regulation be made and those changes have been incorporated into the proposed regulation as currently submitted. NYSAC does not oppose the proposed regulation as submitted since all their changes to the regulation have been incorporated. The Department of State intends to begin accepting applications from interested organizations that have an interest in teaching the certification course once the regulation has been approved.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Approximately one half of the 50 crematories located in the State are located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Cemeteries and crematories that conduct cremations and all their employees whose function is to conduct the daily operations of the cremation process will be required to be certified through an organization approved by the Division of Cemeteries for the operation of a

crematory facility. No crematory employee that conducts the daily operations of a crematory can operate a crematory facility unless they are certified. Proof of all certifications must be posted in the crematory and available for inspection by the Division at any time. Entities interested in providing the course must submit, at least 60 days prior to the start of the course, an application and specified course documentation to the Division of Cemeteries for approval. The Division will provide approval or disapproval within 30 days of such submission. The course provider must present each successful participant with a certificate form that includes an official signature and seal of such organization, and file copies of those forms with the Division of Cemeteries. In addition, the course provider shall retain attendance records, final examinations and a list of certified employees for a period of five years after course completion. There would be no new reporting or record keeping requirements for the cemetery corporations that own and operate crematories.

3. Costs: The estimated cost to attend the certification course per crematory employee may range from \$150.00 to \$450.00. As a matter of policy the Division believes that it would be inappropriate to regulate the fee charged for the certification course since it does not want to be held accountable by the crematory industry for setting a fee that may be cost prohibitive from the perspective of the crematory operators. Based upon that policy decision, the Division feels that it is appropriate for the course provider to set their own fee based upon the current market price for the certification course being offered.

4. Minimizing adverse impact: This regulation will provide a degree or level of attainment for the training and certification requirements of all crematory employees whose function is to conduct the daily operations of the cremation process throughout the State. The regulation will apply uniformly to all crematories across the State and should not impose any adverse or disparate impact.

5. Rural area participation: The certification course will involve both the NYS Department of State (DOS) and the NYS Department of Environmental Conservation (DEC). The DOS will provide a certification course related to the statutory provisions that were enacted in Chapter 579 of the Laws of 2006. The DEC will provide a separate certification course related to air pollution control requirements for crematories. The DEC through the Environmental Facilities Corporation has conducted a survey to determine the location and the number of courses needed to comply with the law. The projected plan is to offer three separate regional testing sites on multiple days in order to meet the needs of the crematory operators and their employees. In addition, DOS and DEC held an informational meeting on April 12, 2007 by inviting all the crematory owners within the state and the New York State Association of Cemeteries (NYSAC) to discuss the proposed regulation. The meeting proved to be successful in that it was well attended and many questions that were raised regarding the proposed regulation were clarified at the meeting. After the April meeting the proposed regulation was presented to NYSAC for their comments. The regulation was presented to the NYSAC cremation committee for review. The committee recommended that several changes be made to the proposed regulation and those changes have been incorporated into the proposed regulation as currently submitted. NYSAC does not oppose the proposed regulation as submitted since all their changes to the regulation have been incorporated. The Department of State intends to begin accepting applications from interested organizations that have an interest in teaching the certification course once the regulation has been approved.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. As a result of the enactment of section 1517(j) of the Not-for-Profit Corporation Law, which became effective October 15, 2006, any employee of a crematory whose function is to conduct the daily operations of the cremation process shall be certified by an organization approved by the Division of Cemeteries. Certifications are valid for five years, and may be renewed only upon successful completion of an approved cremation certification course of study. Inasmuch as this rule affects only those certified crematory operators who seek renewal of certification, it promotes employment by ensuring that only those qualified to provide this service, will be certified.

Department of Transportation

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

Enhancing Safety in Highway Construction and Maintenance Work Zones

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

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

Proposed action: Repeal of Part 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, L. 2005, ch. 223. Proposed regulations provide for measures to be taken in "major active work zones" in New York State.

Text of proposed rule: Part 164 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed and a new Part 164 is adopted to read as follows:

PART 164

TRAFFIC REGULATIONS IN HIGHWAY WORK AREA

(Statutory authority: Vehicle and Traffic Law, §§ 100, 224-a, 1620, 1627, Transportation Law § 22)

§ 164.1 Purpose.

This Part is intended to improve the safety of workers, pedestrians and motorists within a highway work area by allowing for speed limit reductions, police presence, radar speed display signs and safety education and review.

§ 164.2 Definitions.

- (a) Commissioner shall mean the commissioner of transportation.*
- (b) Department shall mean the department of transportation.*
- (c) Highway work area shall mean that portion of the highway being constructed, reconstructed, maintained or improved by the department, its employees, agents, or as contracted to contractors. It is that part of a highway being used or occupied for the conduct of highway work, within which workers, vehicles, equipment, materials, supplies, excavations or other obstructions are present.*

(d) Major active work zone shall mean a divided controlled access highway having grade separated interchange connections with intersecting roads and having a normal speed limit of 55 miles per hour or greater where workers are engaged in a stationary operation that exceeds four hours in duration and that are not predominantly separated from traffic by a temporary concrete or other rigid barrier system.

(e) Normal speed limit shall mean that speed limit had there been no highway work performed.

(f) Police presence shall mean police personnel assigned to a major active work zone or automated speed photo-enforcement systems and other similar devices.

(g) Radar speed display sign shall mean any device capable of measuring vehicle speeds and that clearly displays such speed to approaching vehicles.

(h) Stationary operation shall mean work in a specific location that does not move intermittently or continuously.

(i) Temporary speed limit shall mean the speed limit posted in the highway work area which reduces the normal speed limit on that highway; provided, however, that such a temporary speed limit shall not be less than 25 miles per hour.

§ 164.3 Speeding prohibition.

When the operation of a vehicle involves the traversing of a highway work area, such operation in excess of the posted temporary speed limit shall be unlawful.

§ 164.4 Temporary speed limits.

The regional directors of transportation for the department are hereby authorized to establish temporary speed limits in highway work areas.

§ 164.5 Police Presence.

To the extent practicable, there shall be a police presence at major active work zones. Whether or not such a presence is practicable shall include, but not be limited to, such considerations as available resources.

§ 164.6 Radar speed display signs.

Radar speed display signs shall be employed, where practicable, at major active work zones and shall be used in conjunction with or in close visual proximity to a regulatory speed limit sign. Whether or not such use is practicable shall include, but not be limited to, such considerations as available resources.

§ 164.7 Work zone safety review.

The commissioner shall institute a quality control/quality assurance program for reviewing work zone safety and maintenance and protection of traffic design for all work zones under the jurisdiction of the Department. This program shall include, but not be limited to a system for inspecting work zone maintenance and protection of traffic plans, field implementation of such plans, worker safety training, contractor outreach and enforcement efforts.

§ 164.8 Highway construction and maintenance safety education program.

The commissioner shall establish a highway construction and maintenance safety education program. This shall include a comprehensive set of public education and awareness programs aimed at improving work zone safety. These programs may include public service announcements, media events, websites or mailings. Funding allocated from surcharges imposed on work zone speed limit violations should be used to expand these programs.

The department shall maintain a list and description of such programs and shall report on these biennially to the governor, temporary president of the senate and the speaker of the assembly.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Limoges, Department of Transportation, 50 Wolf Rd., Mail POD 42, Albany, NY 12232, (518) 457-3537, e-mail: rlimoges@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.

Regulatory Impact Statement

1. Statutory Authority: The statutory authority for the New York State Department of Transportation ("NYSDOT" or the "Department") to promulgate these rules is found in the Transportation Law ("TL") and the Vehicle and Traffic Law ("VTL").

TL § 14 sets forth the Department's general powers and specifically § 14(18) authorizes the Department to make rules and regulations to discharge the Department's powers and duties; § 14(12) authorizes the Department to exercise all powers relating to traffic regulation and control as set forth in the VTL or in other laws.

Chapter 223 of the Laws of New York of 2005, enacted the "Work Zone Safety Act of 2005" and amended the following sections of Transportation Law and the Vehicle and Traffic Law:

a) TL § 22 requires the Department to promulgate rules and regulations for the increased safety of work zones. These rules must provide for a police presence at all major active work zones, the use of radar speed display signs at all major active work zones, and a system for reviewing work zone safety and design for all work zones under the jurisdiction of the Department.

b) VTL § 224-a requires the Department to promulgate rules and regulations to establish and implement a highway construction and maintenance safety education program.

2. Legislative Objectives: The proposed adoption of a new Part 164 of 17 NYCRR to the regulations follows this legislative intent by implementing the requirements of the "Work Zone Safety Act of 2005" as enacted by the New York State Legislature. Specifically, the new regulations will: 1) require, where practicable, a police presence in major active work zones; 2) require the use of radar speed display signs in major active work zones; 3) establish a program for review of work zone safety for all work zones under the Department's jurisdiction; 4) establish a safety education program.

The text of the "Work Zone Safety Act of 2005" and the Memorandum in Support are attached.

3. Needs and Benefits: In 2005 the NYS Legislature enacted the "Work Zone Safety Act of 2005". The purpose of this law is to reduce motor vehicle accidents in highway construction and maintenance work zones and thus improve safety for workers and motorists alike.

The proposed regulations are required by the Work Zone Safety Act of 2005 and consist of four main components:

a) The Commissioner of Transportation, in cooperation with the Superintendent of State Police, the Commissioner of Motor Vehicles, the Chairman of the New York State Thruway Authority, local law enforcement agencies and representatives for contractors and laborers, must develop and implement rules and regulations for the increased safety of work zones. 1) These rules must provide for a police presence in "major active work zones"; 2) the use of radar speed display signs at "major active work zones"; and 3) a system for the review of work zone safety and design for all work zones under the jurisdiction of the DOT; and 4) establishment of the highway construction and maintenance safety education program. The Commissioner of Transportation (in consultation with DMV) must promulgate rules and regulations regarding the establishment and implementation of a highway and maintenance safety education program;

These provisions explicitly require that DOT promulgate rules and regulations. To fulfill the Department's obligation in this regard, the proposed additions to 17 NYCRR will address: a) the establishment of a highway construction and maintenance safety education program; and b) regulations for the increased safety of work zones.

The proposed regulations define the components of the "highway construction and maintenance safety education program." This program, to be established by the Department of Transportation, will develop media elements, and innovative strategies and education materials for motorists and workers thereby raising awareness of safe driving practices in work zones. Another program goal will be to educate the public on the increased penalties for speeding through work zones.

The proposed regulations also define measures to improve safety for workers and motorists. These measures include a police presence and the use of radar speed display signs for "major active work zones". The purpose is to reduce traffic speeds, and ultimately motor vehicle crashes in work zones. Criteria for defining "major active work zone" are included as well as a definition of "police presence". Lastly, DOT will be required to review the safety and maintenance and protection of traffic designs of work zones under its jurisdiction.

The proposed regulation, by its very nature, may require the hiring of additional police personnel, as well as additional administrative positions to coordinate the newly required programs. Depending upon available resources, the regulation will have either a positive impact or no impact on jobs and employment opportunities.

4. Costs: The compliance costs are dependent upon the level of available resources.

The proposed regulations require that, to the extent practicable, dedicated police services will be provided in major active work zones. In 2006, the New York State Department of Transportation and Thruway Authority had approximately 120 capital projects (contractor) and dozens of daily maintenance operations (state forces) that met the definition of "major active work zone." The Department estimates the cost of one trooper, including vehicles, to be \$120,000 per year. The total is dependent upon available resources.

In addition to police personnel, this regulation will require additional equipment acquisitions to deploy radar speed display signs in "major active work zones". Some of these units will be included in contracts for construction projects, but both agencies will need to purchase additional units for use in maintenance (state forces) operations. The average cost of a radar speed display sign is \$10,000. This is expected to be a one time expense, with replacement costs of 10% (or \$50,000) per year thereafter.

Administrative costs for this program are estimated to be mainly personnel time. Staff from NYSDOT, NYSTA and State Police will be required to assume new duties to properly coordinate police enforcement, deployment of radar speed display signs and a work zone quality assurance program. For the Department of Transportation, this will require a minimum of 1 full time equivalent (FTE) per DOT Region plus DOT Main Office support staff. A total of 12 FTEs (11 DOT regions plus Main Office) is required in addition to 4 FTEs for the Thruway Authority and 10 FTEs for the State Police. At an estimated cost of \$75,000 per year for salary and benefits, this totals \$1.95M per year (every year) in program administrative costs.

The costs for these programs will be limited to the NYS Department of Transportation, NYS Thruway Authority, New York State Police and potentially the NYS Bridge Authority. "Major active work zones", as defined in the proposed regulations, are limited to roadways under the jurisdiction of these agencies. There are no costs anticipated for local governments or others.

A potential exists for local enforcement agencies to receive compensation for enforcement services through agreements with NYSDOT or NYSTA. These services would be required on roadways not currently

patrolled by the NYSP and would be requested in advance by the agency with maintenance jurisdiction of the roadway.

5. Local Government Mandates: Local governments will not be affected by the proposed regulations or the requirements for police presence and radar speed display signs. The roadways that meet the criteria for "major active work zones" are under state jurisdiction. Therefore, while it may be beneficial to provide these elements for work zones that don't meet the criteria outline in the proposed regulation, it is not required.

6. Paperwork: No additional paperwork will be required as a result of the proposed regulation.

7. Duplication: The proposed regulation outlines new requirements for the safety of highway construction and maintenance work zones. There is no duplication with other state, federal statutes or rules.

8. Alternatives: By the Work Zone Safety Act of 2005, the New York State Legislature has required NYSDOT to implement education, enforcement and engineering actions to improve the safety for workers and motorists in highway construction and maintenance work zones. To satisfy this intent, the Department of Transportation assembled a committee to review and recommend an approach that could be feasibly implemented while complying with the legislative mandate for increased presence of police in work zones and other requirements. In addition to the core team, additional input was sought from members whose participation was required by the 2005 Act. Team members included DOT, NYS Thruway Authority, State Police and contractors' representatives. Several alternatives were considered including:

Do nothing alternative: While programs currently exist for improving the safety of work zones, taking no additional steps to expand and improve these programs does not meet the intent of the Legislature in passing the recent law. Expanded enforcement presence, the use of speed display signs, and increased education efforts were clearly indicated by the Legislature. This alternative was eliminated.

Full Time Police Presence Alternative: Requiring 100 percent, full-time police presence is not logistically or economically feasible. This would double the cost of the enforcement requirement and may not significantly reduce traffic speeds any further than providing a police presence at the proposed level. Further, there would be no flexibility for highway agencies and/or their contractors to continue to perform needed work on highways if police were temporarily unavailable for deployment. Because of these issues, this alternative was eliminated.

Preferred Alternative: This alternative proposes to provide police personnel assigned to "major active work zones" to the extent practicable. Overall, this will provide a substantial increase in police activity at these sites. This enforcement presence will be conspicuous to motorists and will provide some flexibility to deploy limited police resources where they are most needed. Radar speed display signs will also be utilized in "major active work zones". A system for review of work zone maintenance and protection of traffic design shall be established by the Department of Transportation for reviewing that project under its jurisdiction. Lastly, a work zone safety and awareness education program will be implemented by the Department.

The elements of the preferred alternative were incorporated into a draft concept of regulatory language and sent to interested stakeholders including: the Federal Highway Administration, NYS Department of Motor Vehicles, NYS Department of Criminal Justice Services, NYS Bridge Authority, Associated General Contractors, Long Island Contractors Association, Construction Industry Council, Empire State Contractors Association, General Contractors Association, NYS Association of Chiefs of Police, NYS Sheriff's Association, NYS Laborers Tri-Fund, and the Governor's Office of Regulatory Reform. Stakeholders were invited to comment on the language proposed and meet with the developers of the regulation language. Comments received were incorporated as appropriate into the preferred alternative and ultimately the proposed regulation.

9. Federal Standards: 23 CFR Part 630, subpart J was recently amended to include language intended to facilitate consideration and management of the broader safety and mobility impacts of work zones in a more coordinated and comprehensive manner across project development stages, and the development of appropriate strategies to manage these impacts. All state and local governments that receive federal-aid funding are required to comply with the provisions of the rule no later than October 12, 2007.

The proposed regulations are consistent with the requirements of the federal rule. The requirements of the proposed regulation will assist in New York State's compliance with 23 CFR Part 630, subpart J.

10. Compliance Schedule: This regulation shall be effective 60 days after publication of the final rule in the State Register. Due to resource

constraints associated with police personnel, the requirement for police presence will be phased in as resources are available.

Regulatory Flexibility Analysis

1. Effect of rule: There will be little to no effect on small businesses in New York State. The requirements for police presence in "major active work zones" may have a small affect on local governments. For areas where local police agencies patrol roads that meet the criteria for "major active work zones", additional agreements for enforcement services may be pursued by the DOT. The increased demand for police presence in these work zones may result in an increase in overtime funding for local police personnel to perform these services. Local highway agencies should not be impacted by the new requirements.

2. Compliance requirements: The proposed regulation does not require local governments or small businesses to perform any new record keeping or reporting.

3. Professional services: It is not anticipated that any professional services of any kind will be required. By either local governments or small businesses.

4. Compliance costs: Costs resulting from the proposed regulations will be borne by State highway agencies who perform construction or maintenance work in "major active work zones". The highways that meet the criteria for "major active work zones" are not under the jurisdiction of local governments. No costs are expected for small businesses or local governments as a result of the regulation. To the extent that local police services may be utilized, the costs for such services will be borne by the state.

5. Economic and technological feasibility: The proposed regulations will not require any expenditures by small businesses or local governments for new equipment or software to comply.

6. Minimizing adverse impact: The proposed regulations will have no adverse economic impact on small businesses or local governments because the scope of highway construction and maintenance work is limited to roadways under the jurisdiction of the State.

7. Small business and local government participation: The language for the proposed regulation was distributed for review and comment to state agencies affected, FHWA, construction and contracting industry associations and labor organizations statewide. The New York State Association of Chiefs of Police and New York State Sheriff's Association were also notified and invited to provide input. Comments received during this review period have been considered and incorporated into the proposed rule text.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The proposed regulations will apply to work zones and education efforts throughout the state and are limited to highways under the jurisdiction of the state. No specific impact on rural areas, or any particular type of rural area, is anticipated.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed regulation does not require any record keeping or reporting by rural areas. The regulation does not require rural areas to provide or retain professional services.

3. Costs: Costs resulting from the proposed regulations will be borne by State highway agencies who perform construction or maintenance work in "major active work zones". The highways that meet the criteria for "major active work zones" are not under the jurisdiction of local governments. No costs are expected for rural area governments or businesses.

4. Minimizing adverse impact: The proposed regulations will not impact, adversely or otherwise, rural areas as the scope of highway construction and maintenance work is limited to roadways under the jurisdiction of the State.

5. Rural area participation: The language for the proposed regulation was distributed for initial review and comment by state agencies affected, FHWA, construction and contractors as well as industry associations, labor organizations statewide. The Association of Chiefs of Police and New York State Sheriff's Association were also notified and invited to provide input. All comments received during this review period have been considered and incorporated into the proposed rule text.

Job Impact Statement

A Job Impact Statement is not submitted because the proposed addition of Part 164 to Title 17 of NYCRR, by its very nature, will not have an adverse impact on jobs or employment opportunities. As the proposed regulations may require an increased presence of police in "major active work zones". This may require the hiring of additional police personnel as well as the possible need for additional administrative positions to coordinate the newly required programs. Consequently, the proposed addition will have

either a positive impact or no impact on jobs and employment opportunities.