

# RULE MAKING ACTIVITIES

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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.

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## Banking Department

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### NOTICE OF ADOPTION

#### Anti-Money Laundering and Foreign Asset Control Compliance Programs

**I.D. No.** BNK-35-07-00003-A  
**Filing No.** 274  
**Filing date:** March 21, 2008  
**Effective date:** April 9, 2008

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

**Action taken:** Addition of Parts 115, 116, 416 and 417 to Title 3 NYCRR.  
**Statutory authority:** Banking Law, sections 10, 14(1), 24, 26, 29, 37(3), 39, 44, 142, 143-a, 143-b, 201, 324, 367, 369, 370, 370-a, 371, 413, 450, 461, 513, 519, 601, 601-a, 601-b, 641, 646, 649 and 652-a

**Subject:** Anti-money laundering and foreign asset control compliance programs.

**Purpose:** To require banking organizations and certain licensees to demonstrate compliance with applicable anti-money laundering and foreign asset control programs.

**Text of final rule:** PART 115  
ANTI-MONEY LAUNDERING PROGRAMS FOR APPLICATIONS FOR CHARTERS, ACQUISITIONS AND MERGERS AND CHANGES OF CONTROL

(Statutory authority: Banking Law Sections 10, 14(1), 24, 26, 29, 39, 44, 142, 143-a, 143-b, 201, 324, 413, 450, 461, 519, 601, 601-a and 601-b.)

#### Sec. 115.1 Anti-Money Laundering Programs

This Part is issued to assure ongoing compliance with the existing practice of the Superintendent of Banks (the "Superintendent") to require each applicant for a charter, or for approval of an acquisition, merger or change of control to demonstrate an anti-money laundering program that complies with applicable federal anti-money laundering laws, including a required customer identification program (31 U.S.C. Chapter 53, Subchapter II and 31 U.S.C. 5318(l))\* and regulations promulgated by the United States Department of Treasury (31 CFR part 103.120)\*, and, as appropriate, regulations of the Board of Governors of the Federal Reserve System (12 CFR parts 208.63 and 211.24)\*, regulations of the Federal Deposit Insurance Corporation (12 CFR 326.8)\*, and regulations of the National Credit Union Administration (12 CFR part 748.2)\*. In addition, the Department seeks to assure compliance with applicable regulations issued by the Office of Foreign Asset Control of the United States Department of the Treasury ("OFAC") (31 CFR part 500 et seq)\*.

(a) Each applicant shall demonstrate that it has, or on the effective date of the transaction that is the subject of the application, will have, an anti-money laundering program that complies with the applicable federal anti-money laundering laws and regulations referred to in this section 115.1.

(b) For purposes of this Part, the required anti-money laundering program shall, at a minimum:

- 1) Provide for a system of internal controls to assure ongoing compliance;
- 2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;
- 3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and
- 4) Provide training for appropriate personnel.

(c) The anti-money laundering program shall be in writing, approved by the institution's board of directors or equivalent body, and such approval shall be noted in the minutes of the board of directors or equivalent body.

(d) Each applicant shall also maintain, as part of its anti-money laundering program, a customer identification program that complies with the applicable federal anti-money laundering laws and regulations referred to in this section 115.1.

(e) Each applicant also shall demonstrate that it has, or on the effective date of the transaction, will have, risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions comply with OFAC requirements.

(f) Compliance with the applicable federal requirements shall constitute compliance with this Part.

#### Sec. 115.2 Charter and License Applications

All applications submitted for approval by the Department to establish a bank or trust company, private banker, savings bank, savings and loan association, safe deposit company, investment company, credit union, to establish a branch or agency in New York State of a foreign banking corporation or to establish a representative office of a foreign banking corporation shall be accompanied by information demonstrating that the applicant maintains or will maintain an anti-money laundering program that satisfies the requirements set forth in section 115.1.

Sec. 115.3 Merger, Purchase and Assumption, Acquisition and Change of Control Applications

All applications for approval by the Department to merge with, purchase and/or assume, or acquire control (as defined in the applicable provisions of the Banking Law) of, any bank or trust company, savings bank, savings and loan association, investment company, safe deposit company or credit union shall be accompanied by information demonstrating that the applicant has or will have an anti-money laundering program that satisfies the requirements set forth in section 115.1.

#### Sec. 115.4 Waivers

In considering an application, the Department may determine, for good cause shown, that lack of compliance with any of the requirements of this Part does not necessarily preclude approval of the application.

\* For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations (CFR) and the Federal Register, see Supervisory Policy G 1.

#### PART 116

#### MAINTENANCE OF ANTI-MONEY LAUNDERING COMPLIANCE PROGRAMS BY BANKING ORGANIZATIONS AND FOREIGN BANKING CORPORATIONS LICENSED TO MAINTAIN A BRANCH OR AGENCY

(Statutory authority: Banking Law Sections 10, 14(1), 37(3), 39 and 44.)

#### Sec. 116.1 Covered Entities

(a) This Part shall apply to all "Banking Organizations" and "Foreign Banking Corporations."

(b) The term "Banking Organization" shall have the meaning ascribed to it in section 2 of the New York Banking Law.

(c) The term "Foreign Banking Corporation" shall mean any branch, agency or representative office located in New York State of a foreign banking corporation licensed to maintain such a facility under Article V or Article V-B of the Banking Law.

#### Sec. 116.2 Anti-Money Laundering Programs

Every Banking Organization and every Foreign Banking Corporation, in order to guard against money laundering through their institutions, shall establish and maintain an anti-money laundering program that complies with applicable federal anti-money laundering laws (31 U.S.C. Chapter 53, subchapter II)\*, including the obligation to file Suspicious Activity Reports ("SARS") (31 U.S.C. 5318(g))\* and a customer identification program (31 U.S.C. 5318(l))\* and regulations promulgated by the United States Department of Treasury (12 CFR part 103.120)\*, and, as appropriate, regulations of the Board of Governors of the Federal Reserve Board (12 CFR parts 208.63 and 211.24)\*, the Federal Deposit Insurance Corporation (12 CFR part 326.8)\* and the National Credit Union Administration (12 CFR part 748.2)\*. In addition, when ordered, each such entity shall provide within 30 days a written report to the Superintendent of Banks (the "Superintendent") detailing the extent to which it has established such a program. Every Banking Organization and Foreign Banking Corporation also shall comply with applicable regulations issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") (31 CFR part 500 et. seq.)\*.

(a) For purposes of this Part, the required anti-money laundering program shall, at a minimum:

- 1) Provide for a system of internal controls to assure ongoing compliance;
- 2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;
- 3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and
- 4) Provide training for appropriate personnel.

(b) The anti-money laundering program shall be in writing, approved by the institution's board of directors or equivalent body, and such approval shall be noted in the minutes of the board of directors or equivalent body.

(c) Every Banking Organization and every Foreign Banking Corporation will also be required to demonstrate, as part of their anti-money laundering programs, a customer identification program that complies with the applicable federal anti-money laundering laws and regulations referred to in this section 116.1

(d) Every Banking Organization and every Foreign Banking Corporation will further be required to demonstrate they have in place risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions will comply with OFAC requirements.

(e) Every Banking Organization and every Foreign Banking Corporation shall file SARs in accordance with applicable federal law and regulations.

(f) Compliance with applicable federal requirements shall constitute compliance with this Part.

#### Sec. 116.3 Additional Reports

Every Banking Organization and every Foreign Banking Corporation shall provide such additional reports regarding its compliance with this Part as shall be directed by the Superintendent.

\* For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations (CFR) and the Federal Register, see Supervisory Policy G 1.

#### Part 416

#### ANTI-MONEY LAUNDERING PROGRAMS FOR APPLICATIONS FOR LICENSES, BRANCHES AND ACQUISITIONS BY LICENSED CHECK CASHERS AND LICENSED MONEY TRANSMITTERS

(Statutory authority: Law Sections 10, 39, 44, 367, 369, 370, 371, 370-a, 641, 646, 649 and 652-a.)

#### Sec. 416.1 Anti-Money Laundering Programs

This Part is issued to assure ongoing compliance with the existing practice of the Superintendent of Banks (the "Superintendent") to require each applicant for a licensed check casher license or licensed money transmitter license (each a "Licensee"), a branch office of a Licensee or for approval to acquire Licensee to demonstrate an anti-money laundering program that complies with applicable federal anti-money laundering laws (31 U.S.C. Chapter 53, subchapter II)\* and regulations promulgated by the United States Department of the Treasury (31 CFR part 103.125)\* (hereinafter, referred to as "31 CFR 103"). In addition, the Superintendent seeks to assure compliance with applicable regulations of the Office of Foreign Asset Control regulations issued by the United States Department of the Treasury ("OFAC") (31 CFR part 500 et. seq.)\*.

(a) Each applicant shall demonstrate that it has, or on the effective date of the transaction that is the subject of the application, will have, an anti-money laundering program that complies with the applicable federal anti-money laundering laws and regulations referred to in this section 416.1.

(b) For purposes of this Part, the required anti-money laundering program shall, at a minimum:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with 31 CFR 103, including;

(i) Policies, procedures, internal controls developed and implemented under this section shall include provisions for complying with the requirements of 31 CFR 103 including, to the extent applicable to the Licensee, requirements for:

- (A) Verifying customer identification;
- (B) Filing reports;
- (C) Creating and retaining records; and
- (D) Responding to law enforcement requests.

(ii) A Licensee that has an automated data processing system should integrate its compliance procedures with such systems.

(2) Designate a person to assure day to day compliance with the program and 31 CFR 103. The responsibilities of such person shall include assuring that:

- (i) Each Licensee properly files reports, and creates and retains records, in accordance with applicable requirements of 31 CFR Part 103;
- (ii) The compliance program is updated as necessary to reflect current requirements of 31 CFR Part 103, and related guidance issued by the Department of the Treasury; and
- (iii) Each Licensee provides appropriate training and education in accordance with 31 CFR Part 103.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the entity is required to report such transactions under applicable federal law and regulations; and

(4) Provide for independent review to monitor and maintain an adequate program.

(b) The anti-money laundering program shall be in writing and each Licensee shall make copies of the anti-money laundering program available for inspection by the Superintendent as appropriate.

(c) Each Licensee will further be required to demonstrate that it has, or on the effective date of the transaction that is the subject of the application, will have, risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions comply with OFAC requirements.

(d) Compliance with applicable federal requirements shall constitute compliance with the provisions of this Part.

#### Sec. 416.2 License Applications

All applications submitted for prior approval of the Superintendent to become a Licensed Check Cashier or Licensed Money Transmitter shall be accompanied by information demonstrating that the applicant will maintain an anti-money laundering program that satisfies the requirements set forth in section 416.1.

**Sec. 416.3 Branching Applications**

All applications submitted for the prior approval of the Superintendent to establish a branch or branches by any Licensed Check Cashier shall be accompanied by information demonstrating that the applicant has or will have an anti-money laundering program that satisfies the requirements set forth in section 416.1.

**Sec. 416.4 Acquisition Applications**

All applications submitted for the prior approval of the Superintendent to merge with, purchase and/or assume, or acquire control (as defined in the applicable provisions of the Banking Law) of, any Licensed Check Cashier or Licensed Money Transmitter shall in every case be accompanied by information demonstrating compliance with, or a plan that would comply with, the requirements set forth in section 416.1.

**Sec. 416.5 Waivers**

In considering an application subject to this Part, the Superintendent may determine, for good cause shown, that the lack of compliance with any of the requirements of this Part does not necessarily preclude approval of the application.

\* For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations (CFR) and the Federal Register, see Supervisory Policy G 1.

**PART 417**

**MAINTENANCE OF ANTI-MONEY LAUNDERING COMPLIANCE PROGRAMS BY LICENSED CHECK CASHERS AND LICENSED MONEY TRANSMITTERS**

(Statutory authority: Banking Law Sections 10, 37(3), 39, 44, 371, 646 and 649.)

**Sec. 417.1 Covered Entities**

This Part shall apply to all Licensed Check Cashiers and Licensed Transmitters of Money (each a "Licensee").

**Sec. 417.2 Anti-Money Laundering Programs**

Each Licensee, in order to guard against money laundering through their businesses, shall establish and maintain an anti-money laundering program that complies with applicable federal anti-money laundering law (31 U.S.C. Chapter 53, subchapter II)\*, including the obligation to file Suspicious Activity Reports ("SARS") (31 U.S.C. '5318(g))\* and regulations promulgated by the Department of Treasury (31 CFR part 103.125)\* (hereinafter referred to as "31 CFR Part 103"), and, when ordered, such entities shall provide within 30 days a written report to the Superintendent of Banks (the "Superintendent") detailing the extent to which each such institution has established such a program. In addition, the Superintendent seeks to assure compliance with applicable regulations of the Office of Foreign Assets Control promulgated by the United States Department of the Treasury (31 CFR part 500 et seq.)\*.

(a) For purposes of this Part, the required anti-money laundering program shall, at a minimum:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this 31 CFR Part 103, including;

(i) Policies, procedures, internal controls developed and implemented under this section shall include provisions for complying with the requirements of 31 CFR Part 103 including, to the extent applicable to the money services business, requirements for:

- (A) Verifying customer identification;
- (B) Filing reports;
- (C) Creating and retaining records; and
- (D) Responding to law enforcement requests.

(ii) Every Licensee that has an automated data processing system should integrate its compliance procedures with such systems.

(2) Designate a person to assure day to day compliance with the program and 31 CFR Part 103. The responsibilities of such person shall include assuring that:

(i) The Licensee properly files reports, and creates and retains records, in accordance with applicable requirements of 31 CFR Part 103;

(ii) The compliance program is updated as necessary to reflect current requirements of 31 CFR Part 103, and related guidance issued by the Department of the Treasury; and

(iii) The Licensee provides appropriate training and education in accordance with 31 CFR Part 103.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the entity is required to report such transactions under applicable federal law and regulations; and

(4) Provide for independent review to monitor and maintain an adequate program.

(b) The anti-money laundering program shall be in writing and each Licensee shall make copies of the anti-money laundering program available for inspection as appropriate by the Superintendent.

(c) Each Licensee will further be required to demonstrate that it has in place risk-based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions comply with OFAC requirements.

(d) Every Licensee shall file SARS in accordance with applicable federal law and regulations.

(e) Compliance with applicable federal requirements shall constitute compliance with the provisions of this Part.

**Sec. 417.3 Additional Reports**

Each Licensee shall provide such additional reports regarding its compliance with this Part as shall be directed by the Superintendent.

\* For information regarding the United States Code (USC or U.S.C.), the Code of Federal Regulations (CFR) and the Federal Register, see Supervisory Policy G 1.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 115.1-115.3; 116.1 and 116.2; 416.1-416.4; 417.1 and 417.2.

**Text of rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

**Revised Regulatory Impact Statement**

**1. Statutory Authority:**

Part 115 - (Sections 10, 14(1), 24, 26, 29, 39, 44, 142, 143-a, 143-b, 201, 324, 367, 369, 370, 371, 413, 450, 461, 513, 519, 601, 601-a, 601-b, 641, 646, 649 and 652-a): Banking Law Section 10 sets forth the policy of New York State with respect to the supervision of banking in this State, including that it is to be supervised in a manner "to protect the public interest"; Section 14(1) sets forth the general powers of the Banking Board, including the power to promulgate regulations; Section 24 provides the Superintendent with broad authority to investigate applications to charter banking organizations; Section 26 gives the Superintendent similar authority to investigate foreign banking corporations seeking to license branches and agencies in New York; Section 29 sets forth the power of the Superintendent to approve branch offices of banking organizations; Section 39 grants the Superintendent authority to issue orders regarding various practices of banking institutions and bank related institutions; Section 44 provides authority for the imposition of penalties for various violations; Section 142 provides the Superintendent with authority to process various applications involving a "bank holding company" under New York Law; Section 143-a grants the Superintendent similar authority with respect to applications involving the acquisition of the capital stock of various banking organizations; Section 143-b provides the Superintendent with similar authority with respect to various other applications for control of banking institutions under New York Law; Section 201 provides authority to the Superintendent with respect to applications by foreign banking corporations to establish licensed branches and agencies in New York; Section 324 provides the Superintendent with broad authority to investigate applications for change of control of safe deposit companies; Section 413 relates to the Superintendent's authority to approve interstate acquisitions involving savings and loan associations; Section 450 provides for the formation of credit unions; Section 519 provides for the approval of a change of control of an investment company; and Section 601, 601-a and 601-b all relate to the approval of mergers and purchase and assumption agreements involving banking institutions.

Part 116 - (Sections 10, 37(3), 39, 44 and Section 513): In addition to the authority provided by Sections 10, 39 and 44 (discussed above), Section 37(3) of the Banking Law provides the Superintendent with broad discretion to require various banking organizations, licensed check cashiers and licensed money transmitters to make reports to the Superintendent. Section 513 also provides the Superintendent with authority to request special reports from investment companies.

Part 416- Sections 10, 39, 44, 367, 369, 370, 370-a, 371, 641, 646 and 652-a): In addition to the authority provided by Sections 10, 39 and 44

(discussed above), Sections 367, 369, 371 and 370-a provide the Superintendent with broad authority to impose restrictions on the operations of licensed check cashers, including a change of control with respect to such entities. Similarly, Sections 641, 646, 649 and 652-a set out the Superintendent's authority with respect to licensing, change of control and operating requirements for licensed transmitters of money.

Part 417 - (Sections 10, 37(3), 39, 44, 371, 646 and 649.) In addition to the authority provided by Sections 10, 37(3), 39, 44, 371 and 646 (discussed above), Section 649 provides general authority for the Superintendent to make rules and regulations, including by imposing reporting requirements, for licensed money transmitters.

#### 2. Legislative Objective:

In enacting the above-cited provisions, the legislature intended the Superintendent of Banks to have broad discretion to adopt requirements for the chartering and licensing of banking and other financial services organizations.

#### 3. Needs and Benefits:

Currently, the Department requests information from applicants regarding their compliance with AML requirements, but these requests are informal. In the period since September 11, 2001, federal and state regulators have moved to increase their scrutiny of regulated entities in the anti-money laundering ("AML") context. The AML requirements are intended to protect the financial system from abuse by criminal organizations and terrorist groups. New York does not currently have formal application or compliance requirements in this area, although it does generally require applicants to demonstrate compliance with AML requirements and does examine for such compliance after chartering or licensing. The proposed regulations would simply convert these current practices into regulatory requirements.

The purpose of Part 115 would be to require applicants seeking to charter or license banks, trust companies, savings banks, savings and loan associations, private bankers, investment companies, safe deposit companies, credit unions and foreign bank branches, agencies or representative offices to demonstrate their ability to comply with existing federal AML requirements. Proposed Part 115 also would impose similar requirements on applications to acquire such entities chartered under New York Law. The purpose of Part 116 would be to impose these requirements on entities already chartered or licensed as banking institutions.

Part 416 would require applicants seeking a license to establish a check casher or money transmitter to make a similar showing to that required by Part 115 with respect to compliance with federal AML requirements. Part 417 would impose on existing licensed check cashers and money transmitters requirements similar to those imposed by Part 116 on banking institutions.

Adoption of these regulations will increase the Department's ability to mandate compliance in what is considered an extremely important area. It will also increase the Department's ability to take enforcement action against entities found to be in violation of AML requirements.

All of these institutions are subject to a federal AML requirement and will be able to demonstrate compliance with these new rules by evidencing compliance with their existing federal requirements. No additional showing will be required.

#### 4. Costs:

All institutions subject to these new rules are already subject to a federal AML requirement. Since entities will be able to demonstrate compliance with these new regulations by demonstrating that they meet the federal AML requirement to which they are subject, any new costs imposed will be nominal. Entities not subject to the federal AML requirements will not be affected by these rules.

#### 5. Local Government Mandates:

The proposed rules impose no burdens on local governments.

#### 6. Paperwork:

Paperwork and reporting requirements for institutions subject to this new rules are expected to be modest. Only entities already subject to federal AML requirements will have to demonstrate compliance with these new rules. Moreover, compliance with federal rules will constitute compliance with these rules. Both banking organizations and licensees will demonstrate compliance in the application process by submitting copies of their proposed or existing AML and foreign asset control policies. Ongoing compliance will be confirmed as it is now through the Department's examination processes.

#### 7. Duplication:

While the requirements imposed by these proposed regulations are identical to existing requirements imposed by the federal government, the impact of such duplication will be minimal since compliance with existing

federal requirements will constitute compliance with the proposed rules. Only institutions subject to existing federal AML requirements will be subject to the requirements imposed by Parts 115, 116, 416 and 417.

#### 8. Alternatives:

The Department considered not implementing the proposed rules, but after review it was determined that AML compliance is of such importance to the public safety and the safety of the financial services industry that increasing the Department's ability to review and enhance such compliance through adoption of the regulations was appropriate.

#### 9. Federal Standards:

As discussed above, the proposed regulations would only apply to entities with existing federal AML compliance obligations. Compliance with existing federal requirements would constitute compliance with these new requirements.

#### 10. Compliance Schedule:

Compliance with the proposed regulations would be required immediately upon their becoming effective, but, as noted, compliance would require only a showing that the applicant is in compliance with the federal AML requirements to which it is already subject.

#### **Revised Regulatory Flexibility Analysis**

The proposed rules will not have a material impact on small businesses and do not affect local governments. Specifically, the proposed rules require persons or entities seeking to charter banks, trust companies, savings banks, savings and loan associations, investment companies, private bankers, credit unions, safe deposit companies and foreign banking corporations seeking a branch, agency or representative office license in New York and persons and entities seeking licenses for licensed check cashers and licensed money transmitters to demonstrate compliance with applicable federal anti-money laundering ("AML") requirements as part of their chartering or licensing applications to this Department. Similar requirements are imposed on acquisition applications involving banks, trust companies, savings banks, savings and loan associations, investment companies, private bankers, credit unions, safe deposit companies, money transmitters and licensed check cashers. Finally, the proposals impose ongoing compliance obligations on these same entities to demonstrate their compliance with federal AML requirements. These new requirements are satisfied by a showing that the covered entity is in compliance with applicable federal AML requirements. As is the Department's current practice, this will be accomplished by the entity filing a copy of its federal AML compliance program with the Department in the case of new applications, and in the case of existing entities through the Department's existing examination procedures. Hence, no new regulatory compliance initiatives are required by these proposals, and, accordingly, the new rules will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses and local governments.

#### **Revised Rural Area Flexibility Analysis**

The proposed rules will not have a material impact on public or private entities in rural areas. Specifically, the proposed rules require persons or entities seeking to charter or license banks, trust companies, savings banks, savings and loan associations, investment companies, private bankers, credit unions, safe deposit companies, foreign banking corporation branches, agencies or representative offices, check cashers and licensed money transmitters to demonstrate compliance with applicable federal anti-money laundering ("AML") requirements as part of their chartering or licensing applications to this Department. Similar requirements are imposed on acquisition applications involving banks, trust companies, savings banks, savings and loan associations, investment companies, private bankers, credit unions, safe deposit companies, money transmitters and licensed check cashers. Finally, the proposals impose an ongoing compliance obligation on these same entities to demonstrate their compliance with federal AML requirements. Compliance with existing federal AML requirements will satisfy these requirements. Hence, no new regulatory compliance initiatives are required by these proposals, and the new rules will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on public or private entities in rural areas.

#### **Revised Job Impact Statement**

The changes to New Parts 115 and 116 of the General Regulations of the Banking Board and New Parts 416 and 417 of the Superintendent's Regulations as proposed do not necessitate revision of the previously published document referred to above.

#### **Assessment of Public Comment**

##### Summary of Comments:

The proposed regulations were published in the August 29, 2007 *State Register*. Three comments on the proposals were received:

1. The New York State Credit Union League, Inc. noted that, in its view, current federal regulations are sufficient to ensure compliance with Bank Secrecy Act requirements. It urged the Department to interpret these proposals as narrowly as possible so as to minimize undue regulatory burden on its members. It also recommended that the proposals include guidance on how compliance with the federal requirements could be demonstrated to the Department. Finally, it recommended that any provisions in the proposals that allowed the Department to request “such additional reports” as directed by the Superintendent be deleted.

2. A comment letter filed on behalf of The Money Services Round Table (“TMSRT”) argued that Part 417.2(c) is vague because, while it calls for each licensee to demonstrate policies, procedures and practices designed to ensure compliance with regulations issued by the Office of Foreign Assets Control (“OFAC”), OFAC itself does not prescribe any such compliance procedures and practices. The comment recommended that the proposal be deleted or modified to require licensees to demonstrate, to the maximum extent practicable, that their transactions will not transgress OFAC prohibitions. It also stated that the requirement in Part 417 that licensees also provide “such additional reports” as required by the Superintendent was overbroad.

3. Comments filed on behalf of the Financial Services Centers of New York, Inc. (“FSCNY”) paralleled those of TMSRT, although the FSCNY comments applied equally to proposed Parts 416 and 417.

**Changes Made to Proposed Rule:**

In response to these comments, the proposals have been modified to require any covered entity to demonstrate only “risk based policies, procedures and practices to ensure, to the maximum extent practicable, that its transactions comply with OFAC requirements.”

In addition, the regulations have been redrafted to simplify them, and references to federal laws and regulations have been redrafted to be consistent with the new format contained in the amended Supervisory Policy G 1. Finally, Parts 115 and 116 have been modified to include representative offices of foreign banking corporations as covered entities. This latter change was made to conform the proposals to their federal counterparts.

consultation with the resident and the resident’s parents or guardian, must develop an authorized visitors list for each resident. The visitor regulation is amended to permit unrestricted visits by the resident’s legal counsel or law guardian and the Office of the Ombudsman. The regulation is clarified to state that the facility may refuse a visitor under the age of 18 unless the visitor is accompanied by the resident’s parent, legal guardian or other suitable person. Each resident must receive a copy of the facility visitation policy.

The proposed amendments to subpart 171-2 of 9 NYCRR affect the sending and receiving of mail by residents. Language is added to clarify that “privileged mail” is defined and addressed in subpart 171-3 of 9 NYCRR and is not affected by subpart 171-2. The regulation provides that resident mail is private and outgoing mail is not to be read, censored or rejected except in limited and specified circumstances. If the facility director determines that mail must be withheld from a resident for any reason, the amendments require that the resident be notified in writing. The proposed amendments permit delayed notice if the delay is necessary because of an on-going investigation. The proposed amendments add definitions of the terms “inspection” and “immediate family member”. The facility director may waive the prohibition on receipt of correspondence from an incarcerated person where such person is an immediate family member of the resident and a waiver is in the resident’s best interests. The proposal clarifies existing policy and procedure by stating that residents may seal outgoing mail, subject to the exception that a facility director may authorize reading of a resident’s mail under specified circumstances and requires notification to the resident of such action. Finally, the provision for appeal (section 171-2.7) is repealed. A separate appeal provision for this subpart is not necessary. The appeal provision will now be contained in subpart 171-5.

The proposed amendment adds subpart 171-4 to 9 NYCRR and affects telephone calls to and from residents of OCFS operated facilities. The proposed amendments permit a resident to make and receive telephone calls from a custodian, guardian, foster parent, immediate family members or a person who has demonstrated a parental, sibling relationship with the resident, or an authorized telephone contact who are placed on a list to be cooperatively developed by the facility, the resident and the resident’s parent or guardian. The proposed amendments permit the facility director to waive the prohibition on telephone calls to or from an incarcerated person, where the incarcerated person is an immediate family member of the resident and a waiver is in the resident’s best interests. The amendments clarify that telephone contacts between youth in OCFS custody at the same facility also are prohibited. The amendments require actual notice to the resident that telephone calls may be monitored with the exception of telephone calls with legal counsel and the Office of the Ombudsman. The proposed amendments clarify that residents are permitted to receive one telephone call a day in addition to any calls from a legal representative or the Office of the Ombudsman, subject to the physical capacity of the telephone equipment of a particular facility to accommodate the resulting volume of calls. The proposed amendments state that residents are permitted to make telephone calls at State expense to the Office of the Ombudsman.

The proposed amendment adds subpart 171-5 to 9 NYCRR and such subpart will include the process provided for in former section 171-2.7 and be expanded to apply to the determination of the facility director as to the removal or exclusion of a person from either the authorized visitors list or the authorized telephone list in addition to a facility director’s determination to limit a resident’s incoming or outgoing mail.

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 171-1.7, 171-2.1(b), 171-4.2(a), 171-4.4(a)(1), 171-4.5(a)(3) and Subpart 171-5.

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

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

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

**Revised Regulatory Impact Statement**

1. Statutory authority:

Sections 500 and 501 of the Executive Law (EL) authorize the Office of Children and Family Services (OCFS), formerly the New York State Division for Youth, to promulgate regulations necessary to carry out the functions of Article 19-G of the Executive Law.

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## Office of Children and Family Services

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### REVISED RULE MAKING NO HEARING(S) SCHEDULED

**Residential Youth Facilities**

**I.D. No.** CFS-15-07-00010-RC

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

**Revised action:** Amendment of Part 171 of Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 500, 501 and 504 of art. 19-G; L. 1997, ch. 436

**Subject:** Operation of the Office of Children and Family Services youth residential facilities concerning mail, telephone and visitors.

**Purpose:** To amend the rules relating to the procedures for permitting resident mail, telephone calls and visitors to OCFS residents.

**Expiration date:** July 9, 2008

**Substance of revised rule:** This proposal amends Title 9 NYCRR subparts 171-1.7 (Visitors), 171-2 (Resident Mail), 171-4 (Resident Telephone Calls), and 171-5 (Appeals) governing the operations of the Office of Children and Family Services (OCFS) residential youth facilities and the rights of resident youth to receive visitors, to send and receive mail, and to place and receive telephone calls.

The residents of OCFS facilities have been court ordered into the care and custody of OCFS for purposes of treatment, housing, guidance, education and rehabilitation. Under NYS Executive Law Article 19-G, OCFS is required to operate and maintain facilities for the care and custody of such youth, and is further authorized to promulgate such regulations as are necessary to carry out its statutory functions.

The proposed amendments to the regulation add a definition of “authorized visitor” to section 171-1.7 of 9 NYCRR. The facility staff, in

Section 504(1) of Article 19-G of the EL requires the OCFS to operate and maintain facilities for the care, custody, treatment, housing, education, rehabilitation and guidance of youth in OCFS custody.

Chapter 436 of the Laws of 1997 transfers to the OCFS all functions, powers, duties and obligations of the New York State Division for Youth.

#### 2. Legislative objectives:

The proposed amendments are consistent with the legislative and public policy objectives of maintaining family contacts while a youth is in OCFS custody. Residents of OCFS facilities are juvenile delinquents, juvenile offenders and juvenile offenders who have received youthful offender treatment who are placed in or committed to OCFS custody by the courts for the purposes of rehabilitation.

#### 3. Needs and benefits:

These regulations pertain to certain internal operations of OCFS youth facilities, and are not applicable elsewhere. The objective of the proposed amendments to Subpart 171-2 (Resident Mail) of Title 9 of the New York Codes, Rules and Regulations (NYCRR) is to clarify internal procedures for handling resident mail at OCFS facilities. Subpart 171-2 does not apply to child care institutions operated by authorized agencies and licensed by OCFS.

The objective of the proposed amendments to Subpart 171-4 (Resident Telephone Calls) of Title 9 of the NYCRR is to expand access and clarify the internal procedures for telephone calls between residents of OCFS facilities and their families while maintaining the safety, security and good order of OCFS facilities. Subpart 171-4 does not apply to child care institutions operated by authorized agencies and licensed by OCFS.

Section 171-2.2 is amended to state explicitly that resident mail may not be read, censored or rejected except in accordance with the provisions of the Subpart. Youth must be notified in writing when incoming or outgoing correspondence is withheld. The proposed amendment also protects the safety, security and good order of OCFS facilities by permitting the required notification to a resident that his or her mail has been read, censored or rejected to be delayed if notification would interfere with an on-going investigation.

Section 171-2.3 is amended to define additional terms used in Subpart 171-2. The term "inspection" is added and states that "inspection" of mail does not include reading the contents. A definition of "immediate family member" is provided in lieu of listing the applicable family relationships in Sections 171-2.4 (Incoming Mail) and 171-2.5 (Outgoing Mail).

The proposed amendments conform the language in Sections 171-2.4 and 171-2.5 with the language in Subpart 171-4 pertaining to resident telephone usage. Both Subparts set forth the categories of incarcerated persons with whom residents may not have contact in the absence of a determination by the facility director or a court of competent jurisdiction that such contact would be in the best interest of the resident. Section 171-2.4 is reorganized to be clearer. In addition, the amendment to Sections 171-2.4 and 171-2.5 would expand the categories of incarcerated persons for whom a waiver may be granted to include a spouse or child of the resident and a person who has demonstrated a parental or sibling relationship with the resident. Section 171-2.5 is revised to add language to Subdivision (h) stating that writing materials must be made available to residents.

The proposed amendments to Section 171-2.6 pertaining to negative correspondence to correct a reference to the reorganized Section 171-2.4 and specify a timeframe during which the facility director must respond to a resident who has requested that a name be removed from the resident's negative correspondence list. The examples of contraband listed in the current regulation are eliminated, as the list is not comprehensive and may be misleading.

Section 171-2.7 is repealed and such material will be included and expanded in a new subpart 171-5.

The amendments to Subpart 171-4 of Title 9 of the NYCRR expand access and clarify the internal procedures on resident telephone usage while at an OCFS facility.

Section 171-4.2 is amended to incorporate a definition of "immediate family" and "authorized telephone contact" for the purposes of Subpart 171-4. The definition of "immediate family" includes a child of the resident, a relationship that was overlooked in the current regulation. In addition, the proposed amendments add a foster parent, a person who has demonstrated a parental relationship with the resident, and the custodian or guardian of a child of the resident as persons whom the resident may contact by telephone under Subpart 171-4. An "authorized telephone contact" will include such persons who are a positive or therapeutic influence on the youth and who should be allowed telephone contact, a list of which are to be developed cooperatively by the facility, the resident and the

resident's parent or guardian. A new Subdivision (c) of Section 171-4.2 requires that the facility remind residents that telephone calls, other than those to a legal representative or ombudsman, may be monitored by the facility.

The proposed amendments conform the language in Sections 171-4.4 (Incoming calls) and 171-4.5 (Outgoing calls) with parallel provisions in Subpart 171-2 pertaining to resident mail. Both Subparts set forth the categories of incarcerated persons with whom a resident may not have contact in the absence of a determination by the facility director that such contact would be in the best interest of the resident. The amendments to Sections 171-4.4 and 171-4.5 would expand the categories of incarcerated persons for whom a waiver may be granted to include a spouse or child of the resident and a person who has demonstrated a parental or sibling relationship with the resident. Section 171-4.4 is reworded for clarity.

The proposed amendment to Section 171-4.5 clarifies that a resident may call the OCFS Ombudsman at State expense even where the facility has a collect call (only) telephone system for resident use.

Section 171-4.6 pertaining to suspension of telephone privileges is amended to clarify that a violation of rules or procedures by a resident may result in a loss of the resident's privileges with one or more specified person for a specified period of time, or indefinitely.

The proposed amendment to Section 171-4.7 deletes an obsolete provision pertaining to waivers by the Deputy Commissioner and adds a new appeal process for a resident whose telephone privileges have been restricted.

The proposed amendments to Section 171-1.7 (Visitors) clarify the classes of persons who may visit a resident. "Authorized visitor" had not been defined previously and under this proposal would be defined as a visitor whose name is included on a list developed cooperatively upon intake by the facility staff, the resident, and the resident's parent or guardian, taking the resident's best interest into account. This will allow for visits by persons who may have no familial relationship and might otherwise have been excluded from contact, but are recognized as having a positive or therapeutic influence on the youth, while at the same time permitting the facility to exclude as visitors unaccompanied minors, most usually peers from home, who may be negative influences upon the resident. Lastly, the proposal carves out a clear and specific exception for the Ombudsman and legal counsel, giving them unrestricted access to the youth/client.

The amendments to these regulations clarify general "outside" contact procedures for residents of OCFS facilities. Separate procedures for privileged correspondence are set forth in Subpart 171-3, and are not affected by these amendments.

New subpart 171-5 will include the process provided for in former section 171-2.7 and be expanded to apply to the determination of the facility director as to the removal or exclusion of a person from either the authorized visitors list or the authorized telephone list in addition to a facility director's determination to limit a resident's incoming or outgoing mail.

#### 4. Costs:

Implementation and compliance with the proposed amendments are expected to have no substantial costs associated with implementation. Residents presently are permitted visitors, phone calls and mail privileges with restrictions; this rulemaking simply amends the specific limitations and restrictions. It is anticipated that no additional staff will be required to implement these changes or monitor compliance by residents.

#### 5. Local government mandates:

The proposed regulations impose no mandates on local government.

#### 6. Paperwork:

OCFS estimates that the paperwork required to implement the proposed revisions to Subpart 171 will be negligible. A resident whose mail is withheld must be so notified in writing. The appeal process for residents utilizes the existing resident grievance process. The telephone regulations contemplate limitations due to the physical capacity of the phone system in a given facility, but are otherwise unremarkable and require no additional paperwork. The visitor regulations provide that a list of approved visitors be created upon intake of a new resident; that procedure is currently being followed pursuant to existing regulations, and any alterations to such list as a result of these amendments will not require any new paperwork.

#### 7. Duplication:

The proposed regulation does not duplicate any other existing legal requirements of the State or federal governments.

#### 8. Alternatives:

No significant alternatives to the current proposal were considered.

#### 9. Federal standards:

There are no relevant federal standards pertaining to the proposed amendments.

10. Compliance schedule:

OCFS facilities will be expected to be in compliance with the requirements of the proposed regulation within 30 days of its adoption.

**Revised Regulatory Flexibility Analysis**

Although substantive changes were made to the proposed regulations concerning procedures related to resident mail, telephone calls and visitors, those changes do not require changes to the Regulatory Flexibility Analysis, as originally published.

**Revised Rural Area Flexibility Analysis**

Although substantive changes were made to the proposed regulations concerning procedures related to resident mail, telephone calls and visitors, those changes do not require changes to the Rural Area Flexibility Analysis, as originally published.

**Revised Job Impact Statement**

Although substantive changes were made to the proposed regulations concerning procedures related to resident mail, telephone calls and visitors, those changes do not require changes to the Job Impact Statement, as originally published.

**Assessment of Public Comment**

The Office of Children and Family Services (OCFS) received one letter that contained three comments from two members of the New York State Assembly.

One comment related to the proposed clarification is the addition of definition of "authorized visitors" in § 171-1.7 to allow the creation of a list of authorized visitors to be developed cooperatively by facility staff, the resident and the resident's parent or guardian. This would permit inclusion of persons who may not have a familial relationship to visit a youth placed in an OCFS facility. The commentors agreed with the change proposed by OCFS to permit unrelated persons who might otherwise have a positive or therapeutic influence on the youth to visit with the resident but recommended that the rules in § 171-4 also be amended to permit calls to and from the persons on the authorized visitors list with the resident including such unrelated persons.

OCFS agrees with the commentors that there are unrelated persons who might otherwise have a positive or therapeutic influence on the youth who should be allowed telephone contact and will revise the regulations in § 171-4 to expand the persons who are allowed to make telephone calls to and be called by telephone by residents in OCFS facilities to include a telephone contact list of such persons who are a positive or therapeutic influence on the youth who should be allowed telephone contact to be developed cooperatively by the facility, the resident and the resident's parent or guardian.

Another comment by the commentors was that the proposed regulations in § 171-1.7 only permitted the inclusion of persons on the authorized visitors list at intake or time of admission to the facility and that it should permit the list to be amended at times after the initial admission.

OCFS agrees with this comment and will revise the proposed regulation to provide that an initial listing will be developed at intake, however it can be altered at any point during placement by agreement of the facility director and the resident's parent or guardian. This will also be done with respect to the authorized telephone contact list.

The last comment called attention to the conflict in that § 171-2.6a which provided for appeals regarding facility determinations of persons included in the negative correspondence list to be in accordance with § 171-2.7. While the proposed rules provide for the repeal of § 171-2.7. The commentor requested that OCFS to clarify the rule.

OCFS agrees that the proposed rule is unclear. A new subpart 171-5 will be added and § 171-2.6a will be revised to reference the new subpart 171-5 as well as revising the other rulemaking documents to be consistent with this revision.

**Department of Correctional Services**

**NOTICE OF ADOPTION**

**Central Monitoring Case Designation Status**

**I.D. No.** COR-05-08-00001-A

**Filing No.** 272

**Filing date:** March 21, 2008

**Effective date:** April 9, 2008

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

**Action taken:** Repeal of Part 1000 and addition of new Part 1000 to Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Central monitoring case designation status.

**Purpose:** To expeditiously promulgate central monitoring case review procedures in the best interest of the public safety.

**Text or summary was published** in the notice of proposed rule making, I.D. No. COR-05-08-00001-P, Issue of January 30, 2008.

**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, 1220 Washington Avenue, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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

**Bedford Hills Correctional Facility**

**I.D. No.** COR-15-08-00001-P

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

**Proposed action:** This is a consensus rule making to repeal section 100.80(c)(5) and amend section 100.80(c)(3) and (4) of Title 7 NYCRR.

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

**Subject:** Bedford Hills Correctional Facility.

**Purpose:** To remove the reference to the unit for condemned persons (death row) from the directive in accordance with recent litigation.

**Text of proposed rule:** The Department of Correctional Services seeks to repeal section 100.80(c)(5) of 7NYCRR and to amend sections 100.80(c)(3) and 100.80(c)(4) as follows:

(c) Bedford Hills Correctional Facility shall be classified as a maximum security correctional facility, to be used for the following functions:

- (1) general confinement facility;
- (2) reception center for all females committed to the custody of the department, by any court in this State, under indeterminate or determinate sentence.
- (3) detention center; *and*
- (4) diagnostic and treatment center[; and].

**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, 1220 Washington Ave., Bldg. 2, State Campus, Albany, NY 12206-2050, (518) 457-4951, 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.

**Consensus Rule Making Determination**

The Department of Correctional Services has determined that no person is likely to object to the proposed action to repeal as the Department is merely ensuring the regulation is consistent with the ruling made by the New York State Court of Appeals in *People v. Taylor*, 9 N.Y.3d 129 (2007), which determined that the New York State death penalty sentenc-

ing statute enacted in 1995 violates the New York State Constitution on its face and it is not within the power of the judiciary to save the statute.

**Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities.

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## Division of Criminal Justice Services

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### EMERGENCY RULE MAKING

**Confirmation of a Victim of Human Trafficking**

**I.D. No.** CJS-07-08-00008-E

**Filing No.** 276

**Filing date:** March 20, 2008

**Effective date:** March 25, 2008

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

**Action taken:** Addition of Part 6174 to Title 9 NYCRR.

**Statutory authority:** Executive Law, section 837(13); L. 2007, ch. 74, section 14

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

**Specific reasons underlying the finding of necessity:** The proposed rule provides a mechanism to allow a victim of human trafficking to receive interim State services pending certification by the Federal government that they are a victim of a severe form of trafficking and therefore eligible for Federal services. As part of the Federal Trafficking Victims Protection Act of 2000, the Federal government provides social services and immigration assistance to persons who are certified to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing Federal, State, and local services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the Federal government to help victims obtain special visas that allow them to remain in the United States. These services are crucial to ensuring victims' assistance in investigating and prosecuting traffickers.

There was a gap in the provision of services, however, for pre-certified victims. Chapter 74 of the Laws of 2007 (effective November 1, 2007) addresses this gap in services by authorizing access to a broad range of services to pre-certified victims of human trafficking, but only if the Division of Criminal Justice Services, in consultation with the Office of Temporary and Disability Assistance, determines that victim appears to meet the criteria for certification under the Federal Trafficking Victims Protection Act of 2000 or is otherwise eligible for Federal, State, or local benefits (see Social Services Law section 483-cc). This rule provides the procedure for the Division to make such determinations as required by Social Services Law section 483-cc.

The services authorized by Social Services Law section 483-cc are integral to ensuring victims' assistance in investigating and prosecuting human traffickers. Failure to promulgate this rule on an emergency basis may jeopardize prosecution of human trafficking crimes in New York State.

**Subject:** Confirmation of a victim of human trafficking.

**Purpose:** To implement the provision of Social Services Law section 483-cc by establishing a procedure to determine whether a person appears to be a victim of a severe form of trafficking or appears to be eligible for any Federal, State, or local benefits.

**Text of emergency rule:** A new Part 6174 is added to Title 9 NYCRR to read as follows:

PART 6174

CONFIRMATION AS A VICTIM OF HUMAN TRAFFICKING

§ 6174.1 Purpose. The provisions of this Part shall govern the Division's determination whether an individual appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code or appears to be otherwise eligible for any federal, state or local benefits and services

and, if so, referral for services, as provided in Social Services Law § 483-cc.

§ 6174.2 Definitions. When used in this Part:

(a) The term human trafficking victim shall mean a person who is a victim of sex trafficking as defined in section 230.34 of the Penal Law or a victim of labor trafficking as defined in section 135.35 of the Penal Law.

(b) The term Division shall mean the Division of Criminal Justice Services.

(c) The term Commissioner shall mean the commissioner of the Division of Criminal Justice Services.

(d) The term Human Trafficking Director shall mean the Human Trafficking Director within the Division of Criminal Justice Services.

(e) The term Office shall mean the Office of Temporary and Disability Assistance.

§ 6174.3 Confirmation as a human trafficking victim. (a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency or a district attorney's office to be a human trafficking victim, that agency or office shall notify the Human Trafficking Director and the Office on a form and in a manner prescribed by the Commissioner.

(b) Within three business days after receipt of such referral, the Human Trafficking Director, after consultation with the Office, shall make a determination whether the person appears to either:

(1) meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code; or

(2) be otherwise eligible for any federal, state, or local benefits and services.

(c) If upon good cause, and after consultation with the Office, the Director of Human Trafficking determines that more time is required to make such determination, the Director of Human Trafficking may extend the time period set forth in subdivision (b) of this section.

(d) In making such determination, the Human Trafficking Director shall consider, among other things:

(1) the age and citizenship of the person, if known;

(2) the facts and circumstances surrounding the victimization upon which the referral is based;

(3) the facts and circumstances regarding the Penal Law trafficking crime committed against the victim;

(4) whether the person had been recruited, harbored, transported, provided, or obtained for labor or services through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery;

(5) whether the person had been recruited, harbored, transported, provided, or obtained for the purpose of a commercial sex act induced by force, fraud, or coercion; or

(6) whether the person had been recruited, harbored, transported, provided, or obtained for the purpose of a commercial sex act and the person induced to perform such act was less than 18 years old; and

(7) whether the person:

(i) is willing to assist in every reasonable way with respect to the investigation and prosecution of severe forms of trafficking or of state and local crimes where severe forms of trafficking in persons appear to have been involved; and

(ii) whether the person appears to meet the criteria for a bona fide application for a visa under section 1101(a)(15)(T) of Title 8 of the United States Code or is a person whose continued presence in the United States the United States Attorney General and the United States Secretary of Homeland Security are likely to ensure in order to effectuate prosecution of trafficking in persons.

(e) If the Human Trafficking Director determines that the person appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code, or appears to be otherwise eligible for any federal, state or local benefits and services, he or she shall immediately notify the Office in writing which shall thereafter notify the victim and the referring law enforcement agency or district attorney's office, and the Office may assist the victim and referring law enforcement agency or a district attorney's office in making services available to the victim.

(f) If the Human Trafficking Director determines that the person does not appear to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code, or does not appear to be otherwise eligible for any federal, state or local benefits and services, he or she shall immediately

notify in writing the victim, the referring law enforcement agency or district attorney's office, and the Office.

(g) The Human Trafficking Director shall issue to the victim, the Office, and referring law enforcement agency or district attorney's office a written explanation setting forth the basis for his or her determination within ten business days of receipt of the referral.

§ 6174.4 Appeal. (a) A determination by the Human Trafficking Director that the person does not appear to either meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United State Code or be otherwise eligible for any federal, state, or local benefits and services may be appealed to the Commissioner.

(b) Such appeal shall set forth the reasons why the appellant believes the determination rendered by the Human Trafficking Director was incorrect, and shall be filed with the Commissioner in writing within twenty business days of issuance of the Human Trafficking Director's written explanation.

(c) The Commissioner, after consultation with the Office, shall issue a written response to the appellant, the Office, and the referring law enforcement agency or district attorney's office within fifteen business days of receipt of the written appeal. If the Commissioner determines that the appellant does appear to either meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United State Code or be otherwise eligible for any federal, state, or local benefits and services, the Office may assist the victim and referring law enforcement agency or district attorney's office in receiving services.

§ 6175.5 Consultation with the Office. The Division shall consult with the Office regarding the confirmation of human trafficking victims pursuant to Social Services Law section 483-cc, including, but not limited to, the form and manner in which a law enforcement agency or district attorney's office shall refer a person who reasonably appears to be a human trafficking victim.

**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. CJS-07-08-00008-EP, Issue of February 13, 2008. The emergency rule will expire May 18, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Mark Bonacquist, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, (518) 457-8413

#### Regulatory Impact Statement

1. Statutory authority: Executive Law section 837(13); chapter 74, section 14, of the Laws of 2007.

2. Legislative objectives: Executive Law section 837(13) authorizes the Commissioner of the Division of Criminal Justice Services to promulgate regulations necessary or convenient to the performance of the functions, powers, and duties of the Division. Chapter 74, section 14, of the Laws of 2007 authorizes the Division to promulgate regulations necessary for the timely implementation of the provisions of Social Services Law section 483-cc.

3. Needs and benefits: In 2007, the United States Department of State estimated that approximately 14,500 to 17,500 people are trafficked into the United States each year for forced labor, involuntary domestic servitude, or sexual exploitation. New York is a frequent hub of such activity. Trafficking also originates domestically, and both types of trafficking frequently involve children. In fact, the Office of Children and Family Services recently estimated that over 2,500 children in New York State are exploited for purposes of commercial sexual activity each year.

The rule provides a mechanism to allow a victim of human trafficking to receive interim State services pending certification by the federal government that they are a victim of a severe form of trafficking and therefore eligible for federal services. As part of the federal Trafficking Victims Protection Act of 2000, the federal government provides social services and immigration assistance to persons who are confirmed to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing federal, state, and local services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the federal government to help victims obtain special visas. These services are crucial to ensure victims' assistance in investigating and prosecuting human trafficker crimes.

There was a gap in the provision of services, however, for pre-certified victims. Chapter 74 of the Laws of 2007 addressed this gap in services by authorizing access to a broad range of services to pre-certified victims of

human trafficking, but only if the Division of Criminal Justice Services, in consultation with the Office of Temporary and Disability Assistance (OTDA), determines that victim appears to meet the criteria for certification under the federal Trafficking Victims Protection Act of 2000 or is otherwise eligible for federal, state, or local benefits (see Social Services Law section 483-cc). This rule provides the procedure for the Division to make such determinations as required by Social Services Law section 483-cc.

The services authorized by Social Services Law section 483-cc are integral to ensuring victims' assistance in investigating and prosecuting human trafficker crimes. Failure to promulgate this rule on an emergency basis may jeopardize prosecution of human trafficking crimes in New York State.

#### 4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: There should be minimal costs to law enforcement agencies and district attorneys who will be referring potential victims of human trafficking to the Division and the OTDA.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Implementation of the confirmation process will be accomplished using existing resources.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based on the fact that law enforcement agencies and district attorneys are required only to fax a form containing victim information to the Division and the OTDA.

5. Local government mandates: This proposal would implement the mandate of Social Services Law section 483-cc that law enforcement agencies and district attorneys notify the Division and the OTDA as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim, and provide certain information regarding such victim.

6. Paperwork: The rule requires law enforcement agencies and district attorneys to complete and fax a referral form, prescribed by the Division, as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim which will provide certain information regarding such victim.

7. Duplication: None. There are currently no services available to pre-certified victims of human trafficking.

8. Alternatives: The Commissioner considered not promulgating regulations to implement the provisions of Social Services Law section 483-cc. This alternative was rejected, however, because the Commissioner believes it is necessary to clarify the procedures for law enforcement agencies, district attorneys, and victims to follow in order to implement this new law.

9. Federal standards: As part of the federal Trafficking Victims Protection Act of 2000, the federal government provides social services and immigration assistance to persons who are certified to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing federal, state, and local services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the federal government to help victims obtain special visas that allow them to remain in the United States to testify against traffickers. Services are not available, however, for pre-certified, non-citizen victims.

10. Compliance schedule: Regulated parties are expected to be able to comply with the rule immediately.

#### Regulatory Flexibility Analysis

1. Effect of rule: The rule provides a mechanism to allow a victim of human trafficking to receive interim State services pending certification by the federal government that they are a victim of a severe form of trafficking and therefore eligible for federal services. As part of the federal Trafficking Victims Protection Act of 2000, the federal government provides social services and immigration assistance to persons who are confirmed to be victims of a severe form of human trafficking. Domestic trafficking victims are eligible to receive social services from existing federal, state, and local services programs. These services include case management, emergency temporary housing, and language and translation services, as well as law enforcement coordination with the federal government to help victims obtain special visas. These services are crucial to ensuring that victims assist with the investigation and prosecution of human trafficking crimes.

There was a gap in the provision of services, however, for pre-certified victims. Chapter 74 of the Laws of 2007 addressed this gap in services by authorizing access to a broad range of services to pre-certified victims of

human trafficking, but only if the Division of Criminal Justice Services, in consultation with the Office of Temporary and Disability Assistance (OTDA), determines that victim appears to meet the criteria for certification under the federal Trafficking Victims Protection Act of 2000 or is otherwise eligible for federal, state, or local benefits (see Social Services Law section 483-cc). This rule provides the procedure for the Division to make such determinations as required by Social Services Law section 483-cc.

2. Compliance requirements: This rule would implement the mandate of Social Services Law section 483-cc that law enforcement agencies and district attorneys notify the Division and the OTDA as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim, and provide certain information regarding such victim. The rule requires law enforcement agencies and district attorneys to complete and fax a referral form, prescribed by the Division, as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim which will provide certain information regarding such victim.

3. Professional services: No professional services are required to comply with the rule.

4. Compliance costs: There should be minimal costs to law enforcement agencies and district attorneys who will be referring potential victims of human trafficking to the Division and the OTDA.

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: The Division attempted to minimize adverse impact on regulated parties by clarifying and standardizing the referral process for law enforcement agencies and district attorneys offices. Representatives of law enforcement agencies and district attorneys offices were consulted regarding the language of the rule.

7. Small business and local government participation: Representatives of law enforcement agencies and district attorneys offices were consulted regarding the language of the rule. Their comments and suggestions were considered in formulating the rule. The rule does not apply to small businesses.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: The rule applies to every law enforcement agencies and district attorney office in New York State, many of which are located in rural areas.

2. Reporting, recordkeeping and other compliance requirements and professional services: This rule would implement the mandate of Social Services Law section 483-cc that law enforcement agencies and district attorneys notify the Division and the OTDA as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim, and provide certain information regarding such victim. The rule requires law enforcement agencies and district attorneys to complete and fax a referral form, prescribed by the Division, as soon as practicable after their first encounter with a person who reasonably appears to be a human trafficking victim which will provide certain information regarding such victim. No professional services not already being utilized will be needed to comply with the rule.

3. Costs: There should be minimal costs to law enforcement agencies and district attorneys who will be referring potential victims of human trafficking to the Division and the OTDA.

4. Minimizing adverse impact: The Division attempted to minimize adverse impact on regulated parties by clarifying and standardizing the referral process for law enforcement agencies and district attorneys offices.

5. Rural area participation: Representatives of law enforcement agencies and district attorneys offices, many of whom serve rural areas of the State, were consulted regarding the language of the rule. Their comments and suggestions were considered in formulating the rule.

#### **Job Impact Statement**

The rule provides a mechanism to allow a victim of human trafficking to receive interim State services pending certification by the federal government that they are a victim of a severe form of trafficking and therefore eligible for federal services. As such, it is apparent from the nature and purpose on the proposal that it will have no impact on jobs and employment opportunities.

## Education Department

### EMERGENCY RULE MAKING

#### **Contracts for Excellence**

**I.D. No.** EDU-20-07-00005-E

**Filing No.** 273

**Filing date:** March 21, 2008

**Effective date:** March 22, 2008

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

**Action taken:** Addition of section 100.13 and amendment of section 170.12 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 211-d(1-9), and L. 2007, ch. 57, part A, section 12

**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 211-d, as added by Chapter 57 of the Laws of 2007, to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

Education Law section 211-d requires each school district: (1) that has at least one school currently identified as (I) requiring academic progress or (ii) in need of improvement or (iii) in corrective action or (iv) in restructuring; and (2) that receives an increase in either (I) total foundation aid compared to the base year in an amount that equals or exceeds either \$15 million dollars or 10 percent of the amount received in the base year, whichever is less, or (ii) a supplemental educational improvement plan grant, to prepare a contract for excellence, which shall describe how the total foundation aid and supplemental educational improvement plan grants shall be used to support new programs and new activities or expand the use of programs and activities demonstrated to improve student achievement. The statute requires the Commissioner to establish by regulation the allowable programs and activities for such purposes. The statute also requires the Commissioner to prescribe a format by which each affected school district shall publicly report its expenditures of total foundation aid.

The proposed amendment was adopted at the April 23-24, 2007 Regents meeting as an emergency measure, effective April 27, 2007, in order to immediately establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for contracts for excellence under Education Law section 211-d, so that affected school districts may timely prepare such contracts 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 May 16, 2007.

At their June 25-26, 2007 meeting, the Regents substantially revised the proposed rule, and adopted the revised rule by emergency action, effective July 26, 2007. A Notice of Emergency Adoption and Revised Rule Making was published in the August 8, 2007 State Register.

At their July 25, 2007 meeting, the Board of Regents further revised the proposed rule in response to public comment and adopted the revised rule as an emergency action, effective July 31, 2007. A Notice of Emergency Adoption and Revised Rule Making was published in the August 15, 2007 State Register.

At their September 10, 2007 meeting, and again at their October 23, 2007 and January 14-15, 2008 meetings, the Board of Regents readopted the July emergency rule to ensure that the emergency rule remains in effect until the effective date of its adoption as a permanent rule. The January emergency rule will expire on March 21, 2008.

Further substantial revisions to the proposed amendment have been made, in response to the Department's experience with the implementation of the Contracts for Excellence and discussions held with educational advocates and representatives from school boards and school administrators. These revisions include clarifying requirements for the use of contract of excellence funds, the conduct of the public process for development of

contracts for excellence; and the process for bringing complaints regarding implementation of the contracts. A Notice of Revised Rule Making, reflecting these revisions, was published in the State Register on March 5, 2008.

Pursuant to the State Administrative Procedure Act section 202(4-a), the revised rule cannot be adopted by regular (non-emergency) action until at least 30 days after the March 5, 2008 publication of the revised rule in the State Register. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be adopted by regular action, after expiration of the 30-day public comment period for a revised rule making, is the April 14-15, 2008 Regents meeting. However, the January emergency adoption will expire on March 21, 2008, 60 days after its filing with the Department of State on January 22, 2007. A lapse in the rule's effectiveness would disrupt implementation of the contract for excellence program under Education Law section 211-d.

A seventh emergency adoption is therefore necessary for the preservation of the general welfare to immediately adopt revisions to the rule to clarify requirements for the use of contract of excellence funds, the public process for development of contracts, and the process for bringing complaints regarding contracts, and to otherwise ensure that the emergency rule that was adopted at the April 2007 Regents meeting, revised and readopted at the June and July Regents meetings, and readopted at the September and October and January 2008 Regents meetings, remains continuously in effect until the effective date of its adoption as a permanent rule.

**Subject:** Contracts for excellence.

**Purpose:** To implement Education Law section 211-d, as added by chapter 57 of the Laws of 2007, by establishing allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

**Substance of emergency rule:** The rule is necessary to implement Education Law section 211-d to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

The proposed amendment was adopted as an emergency measure at the April Regents 2007 meeting, revised and readopted as an emergency rule at the June and July Regents meetings, and readopted as an emergency action at the September, October and January 2008 Regents meetings.

At their March 17-18, 2008 meeting, the Board of Regents substantially revised the proposed amendment and adopted it as an emergency measure, effective March 22, 2008. The following is a summary of the emergency rule.

Section 100.13(a) defines: (1) total foundation aid; (2) supplemental educational improvement plan grant; (3) contract amount; (4) base year; (5) experimental programs; (6) highly qualified teacher; (7) response to intervention program and (8) students with low academic achievement.

Section 100.13(b) establishes applicability provisions for determining whether a school district is required to prepare a contract for excellence. A contract shall be prepared by each district: (1) that has at least one school currently identified as: (a) requiring academic progress; (b) in need of improvement; (c) in corrective action; or (d) in restructuring; and (2) that receives: (a) an increase in total foundation aid compared to the base year in an amount that equals or exceeds either fifteen million dollars or ten percent of the amount received in the base year, whichever is less; or (b) a supplemental educational improvement plan grant. For the 2007-2008 school year, such increase in total foundation aid shall be the amount of the difference between total foundation aid received for the current year and the total foundation aid base as defined in Education Law section 3602(1)(j). In NYC, a contract shall be prepared for the city school district and each community district meeting the above criteria.

Section 100.13(c) provides that each contract shall be in a format, and submitted pursuant to a timeline, prescribed by the Commissioner and shall:

(1) describe how the contract amount shall be used to support new programs and new activities or expand use of programs and activities demonstrated to improve student achievement, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(d); and specify how the contract amount will be distributed in accordance with 100.13(c)(3);

(2) specify the new or expanded programs, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(d), for which each sub-allocation of the contract amount shall be used and affirm that such programs shall predominately benefit

students with the greatest educational needs including, but not limited to: (a) limited English proficient (LEP) students and students who are English language learners (ELL), (b) students in poverty, (c) students with disabilities, and (d) students with low academic achievement;

(3) state, for all funding sources, whether federal, state or local, the instructional expenditures per pupil, the special education expenditures per pupil, and the total expenditures per pupil, projected for the current year and estimated for the base year; provided that no later than February 1 of the current school year, the district shall submit a revised contract stating such expenditures actually incurred in the base year;

(4) include any programmatic data projected for the current year and estimated for the base year, as the Commissioner may require; and

(5) in the NYC school district, include a plan that meets the requirements of section 100.13(d)(2)(i)(a), to reduce average class sizes within five years for the following grade ranges: (a) prekindergarten through grade three; (b) grades four through eight; and (c) grades nine through twelve. Such plan shall be aligned with the capital plan of the NYC school district and include continuous class size reduction for low performing and overcrowded schools beginning in the 2007-2008 school year and thereafter and include the methods to be used to achieve proposed class sizes, such as the creation or construction of more classrooms and school buildings, the placement of more than one teacher in a classroom or methods to otherwise reduce the student to teacher ratio. Beginning in the 2008-2009 school year, such plan shall provide for reductions in class size that, by the end of the 2011-2012 school year, will not exceed the prekindergarten through grade 12 class size targets prescribed by the Commissioner after consideration of the recommendation of an expert panel appointed to review class size research.

Paragraph (3) of section 100.13(c) is added, to clarify requirements for the use of contract for excellence funds.

The Commissioner shall approve each contract meeting the provisions of section 100.13(c) and certify, for each contract, that the expenditure of additional aid or grant amounts is in accordance with Education Law section 211-d(2). Approval shall be given to contracts demonstrating to the Commissioner's satisfaction that the allowable programs selected:

(i) predominately benefit students with the greatest educational needs;

(ii) predominately benefit students in schools identified as requiring academic progress, or in need of improvement, or in corrective action, or restructuring and address the most serious academic problems in those schools; and

(iii) are based on practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards.

Section 100.13(d) establishes the allowable programs and activities, including experimental programs.

Section 100.13(d)(1) establishes general requirements, including that such programs and activities: (1) predominately benefit students with the greatest educational needs including, but not limited to: LEP and ELL students, students in poverty, students with disabilities, and students with low academic achievement; (2) predominately benefit students in schools identified as requiring academic progress, in need of improvement, in corrective action, or restructuring and address the most serious academic problems in those schools; (3) be consistent with federal and State statutes and regulations governing the education of such students; (4) be developed in reference to practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards; (5) where applicable, be accompanied by high quality, sustained professional development focused on content pedagogy, curriculum development, and/or instructional design in order to ensure successful implementation of each program and activity; (6) ensure that expenditures of the contract amount shall be used to supplement and not supplant funds expended by the district in the base year for such purposes; (7) ensure that all additional instruction is provided by appropriately certified teachers or highly qualified teachers where required by section 120.6 of this Title, emphasizing skills and knowledge needed to facilitate student attainment of State learning standards; and (8) be coordinated with all other allowable programs and activities included in the district's contract as part of the district's comprehensive educational plan.

Section 100.13(d)(2) establishes criteria for specific allowable programs and activities, which shall include: (1) class size reduction for (a) the NYC school district and (b) all other school districts; (2) student time on task; (3) teacher and principal quality initiatives; (4) middle school and high school restructuring; and (5) full-day kindergarten or prekindergarten programs.

Section 100.13(d)(2)(i) establishes requirements for class size reduction, including special provisions for NYC. NYC must allocate some of its total contract amount to class size reduction according to a plan, included in their contract and approved by the Commissioner pursuant to section 100.13, to reduce the average class size for the following grade ranges: prekindergarten to grade three, grades four through eight, and grades nine through twelve, commencing in the 2007-2008 school year and ending in the 2011-2012 school year, to target levels recommended by the expert panel appointed by the Commissioner. Districts outside of NYC shall establish class size reduction goals in the 2007-2008 school year and demonstrate measurable progress towards meeting such goals; and beginning with the 2008-2009 school year, shall demonstrate measurable progress towards meeting the target levels recommended by the expert panel. The rule also mandates NYC give priority to prekindergarten through grade 12 students in schools requiring academic progress, correction, improvement or in restructuring and to overcrowded schools. Furthermore, it requires that classrooms created shall provide adequate and appropriate physical space to students and staff, among others. Class size reduction may be accomplished through the creation of additional classrooms and buildings, through assignment of more than one teacher to a classroom or, in NYC, by other methods to reduce the student to teacher ratio, as approved by the Commissioner.

Section 100.13(d)(2)(ii) provides that allowable programs and activities related to student time on task may be accomplished by: (1) lengthened school days, (2) lengthened school years and (3) dedicated instructional time, including individual intervention, tutoring and student support services.

Section 100.13(d)(2)(iii) prescribes requirements for teacher and principal quality initiatives, including: (1) recruitment and retention of teachers, (2) mentoring for teachers and principals in their first or second year of a new assignment, (3) incentive programs for teacher placement, (4) instructional coaches, and (5) school leadership coaches. Districts shall ensure that an appropriately certified, or highly qualified teacher where required under section 120.6, is in every classroom and an appropriately certified principal is assigned to every school.

Section 100.13(d)(2)(iv) provides that allowable programs and activities for middle and high school restructuring include: (1) instructional program changes to improve student achievement and attainment of the State learning standards and (2) structural organization changes. The section further requires that districts choosing to make organization changes must also make instructional program changes.

Section 100.13(d)(2)(v) provides that allowable programs and activities for full-day kindergarten or prekindergarten programs include: (1) a minimum full school day program, (2) a minimum full school day program with additional hours for children and families, (3) a minimum full school day program with additional hours in collaboration with community based agencies (prekindergarten only), and (4) classroom integration programs for students with disabilities (specifically for full-day prekindergarten).

Section 100.13(d)(3) lists the following requirements for experimental programs, not included in the allowable programs and activities described above: (1) a maximum percentage of the contract amount that may be used for experimental programs, (2) a plan must be submitted to the Commissioner, (3) the program must be based on an established theoretical base supported by research or other comparable evidence, (4) the implementation plan for an experimental program must be accompanied by a program evaluation plan based on empirical evidence to assess the impact on student achievement, and (5) the experimental program may be in partnership with an institution of higher education or other organization with extensive research experience and capacity.

Section 100.13(d)(3)(ii) states provides a maximum amount of up to \$30 million dollars or twenty-five percent of the contract amount, whichever is less, that districts may use in the 2007-2008 school year to maintain existing programs and activities listed in Education Law section 211-d(3)(a).

Section 100.13(e) establishes criteria for the development of the contract for excellence pursuant to a public process, in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c, which shall include at least one public hearing. Special provisions for NYC's development of the contracts are included.

Section 100.13(f) establishes requirements to assure procedures are in place by which parents may bring complaints concerning implementation of a district's contract for excellence, including special provisions for the NYC.

Section 100.13(g) establishes requirements for the public reporting by districts of their school-based expenditures of total foundation aid.

Section 170.12 (e)(1), relating to requirements of an annual audit of school district records, is amended to provide that, for schools required to prepare a contract for excellence pursuant to Education Law section 211-d, the annual audit for the year such contract is in effect shall also include a certification by the accountant or, where applicable, the NYC comptroller, in a form prescribed by the Commissioner, that the increases in total foundation aid and supplemental educational improvement plan grants have been used to supplement, and not supplant funds allocated by the district in the base year for such purposes.

**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-20-07-00005-EP, Issue of May 16, 2007. The emergency rule will expire May 19, 2008.

**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 sections 101, 207, 215, 305(1) and (2) and 211-d, and section 12 of Part A of Chapter 57 of the Laws of 2007.

##### **LEGISLATIVE OBJECTIVES:**

The proposed rule is consistent with the authority conferred by the above statutes and it is necessary to implement Chapter 57 of the Laws of 2007 by establishing criteria for allowable programs and activities, public reporting by school districts of their total foundation aid expenditures, and other requirements regarding contracts for excellence under Education Law section 211-d.

##### **NEEDS AND BENEFITS:**

The rule is needed to implement the statutory requirements by establishing allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

##### **COSTS:**

a. Costs to State government: None.

b. Costs to local governments:

(i) Sustained Professional Development

Assuming two extra days per year of sustained professional development for contract for excellence programs, for one to two dozen teachers per district at a cost of \$125 per teacher per day, a total annual cost for all of the districts of \$400,000 per year is estimated (treating NYC as 34 districts – one high school district, one special education district and thirty-two community school districts).

(ii) Other Costs

Costs will vary depending on a district's selection of allowable programs and activities. Particular activities where the cost imposed could be large include the following: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs must be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-base intervention; and analyzing, gathering and compiling the necessary research to support their proposed programs and activities. Assuming each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new teachers at \$53,000 per year/per teacher (salary plus benefits), an annual cost of \$9,435,000 is estimated.

(iii) Public Process Costs

Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural districts is around \$7. A half page, posted twice during the comment period, results in about \$1,000 costs: ( \$7 per inch X 70 inches X 2 days = \$980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of \$115,000: Afri-

can-American Observer (\$59 per inch X 70 inches X 2 = \$8,260); El Diario/La Prensa (\$60 X 70 X 2 = \$8,400 ); and the New York Post (\$711 X 70 X 2 = \$99,540).

We anticipate minimal costs for preparation of the public comment record and assessment to be absorbed using existing staff and resources.

(iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000 word legal document into Latin-American Spanish could be procured for \$165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost \$650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint process can be included within other translating functions performed by the City’s Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These two documents could also be posted to the district’s website, or be sent out via other mailings, thereby incurring a small marginal cost.

The rule also requires districts make reasonable efforts to investigate complaints by parents, and notify the complainants of their determination within 30 days of its receipt. The rule provides for appeal procedures. These costs are hard to estimate and should vary by the size and scope of the contract and its allowable program activities. It is expected that the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its public prominence as a school improvement initiative. One might also expect to see more complaints initially and fewer over time as the public process for developing contracts for excellence results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, \$500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were \$400 million in 2008-09 (this figure was \$428 million in 2007-08), the cost statewide would be \$400,000.

c. Costs to private, regulated parties: None.

d. Costs to the Department of implementation and continuing compliance:

There may be additional costs for convening an expert panel by the Commissioner to determine class size ranges, the cost of which will vary depending on the “formality” of the process.

LOCAL GOVERNMENT MANDATES:

Each district identified in the statute must prepare a contract for excellence pursuant to the rule’s provisions. Depending on the allowable programs and activities chosen, the rule mandates or requires certain actions.

School districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings on their proposed contracts, and provide reasonable notice to parents and persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for use.

Districts shall provide reasonable notice to parents of students or persons in parental relation to students of the procedures for bringing a complaint concerning implementation of the contract for excellence, and provide translations of the complaint form and procedures into the languages other than English most commonly spoken in the district.

Each district shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website. Districts may use additional methods to provide notice, including making copies available in schools and district offices, and including copies in district mailings and distributions.

PAPERWORK:

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

Notice of the written public comment period and public hearing shall include:

- (1) a general description of the contract;
- (2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;
- (3) information where to obtain a copy of the proposed contract; and
- (4) a description of the public comment process and public hearing process.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment containing a summary of the substance of the comments received, grouped by subject matter, and the district’s response to each substantive comment, including a statement of any changes made to the contract as a result of such comment, or an explanation why the comment’s suggestions were not incorporated into the contract. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for its use, including the locations and deadline for filing, and provide reasonable notice to parents or persons in parental relation, of the procedures for bringing a complaint concerning implementation of the district’s contract.

Districts shall provide translations of the form and notice into languages other than English most commonly spoken in the district, and shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website, and may use additional methods to provide notice.

The building principal, community superintendent or superintendent, as applicable shall notify the complainant in writing of his or her complaint determination, including the basis for such determination within 30 days from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify the complainant in writing of the appeal determination, including the basis for such determination, and an explanation of the appeal procedures.

Upon appeal of the complaint determination, or an appeal determination of a superintendent or community superintendent, to the trustees/board of education or chancellor, written notice shall be provided the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law section 310.

DUPLICATION:

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

ALTERNATIVES:

An alternative proposal which was considered was to create a fiscal and program accountability system similar to the comprehensive education plan (CEP) process for districts, not meeting their Adequate Yearly Progress (AYP) targets pursuant to the federal No Child left Behind Act. However, a CEP-like process, which would have required large and comprehensive data collection and paperwork requirements, was rejected as too cumbersome, time-intensive and not flexible enough, relative to the simpler, automated, web-based application and monitoring approach enacted by this proposed rule.

FEDERAL STANDARDS:

The proposed rule does not exceed any minimum federal standards. There are no substantive federal standards that are applicable to this proposal insofar as there is no federal equivalent of the contract for excellence.

COMPLIANCE SCHEDULE:

Contracts for 2007-2008 were approved in November 2007 and will apply to expenditures through June 30, 2008. Districts will need to prepare and submit reports to the Department during Fall 2008 summarizing program activities, expenditures and results under their programs, and will

need to have an independent audit performed and submitted to the Department.

Planning for the second year of the program (2008-2009) is ongoing and occurring concurrently. Changes in program regulations and requirements may occur as a result of the budgetary and legislative process. It is anticipated that a similar compliance scheduler under Chapter 57 of the Laws of 2008 will pertain, with districts required to submit or update their contracts by July 1, 2008 and the Department approving such contracts or updates by August 1, 2008.

#### **Regulatory Flexibility Analysis**

##### **Small Businesses:**

The rule is necessary to implement Education Law section 211-d, as added by Chapter 57 of the Laws of 2007, to establish criteria for the preparation and implementation of contracts for excellence by certain specified school districts. It does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### **Local governments:**

##### **EFFECT OF RULE:**

The rule applies to those 56 school districts in the State determined to meet the statutory requirements in Education Law section 211-d necessitating the submission of a contract for excellence.

##### **COMPLIANCE REQUIREMENTS:**

Each school district identified in the statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on allowable programs and activities chosen, the rule requires certain actions.

Districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

Districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings on their proposed contracts, and provide reasonable notice to parents and persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c. The notice shall include:

- (1) a general description of the contract;
- (2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;
- (3) information where to obtain a copy of the proposed contract; and
- (4) a description of the public comment process and public hearing process.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for use.

Districts shall provide reasonable notice to parents of students or persons in parental relation to students of the procedures for bringing a complaint concerning implementation of the contract for excellence, and provide translations of the complaint form and procedures into the languages other than English most commonly spoken in the district.

Each district shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website. Districts may use additional methods to provide notice, including making copies available in schools and district offices, and including copies in district mailings and distributions.

The building principal, community superintendent or superintendent, as applicable, shall notify the complainant in writing of the complaint determination, including the basis therefore, within 30 days from date of the complainant's receipt, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify the complainant in writing of the appeal determination, including the basis therefore, and an explanation of the appeal procedures.

Upon appeal of the complaint determination, or an appeal determination of a superintendent or community superintendent, to the trustees/board of education or chancellor, the trustees, board or chancellor shall provide written notice of the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law section 310.

##### **PROFESSIONAL SERVICES:**

Depending on which allowable programs and activities are chosen, districts may be required to procure experts in: teacher professional development, curriculum and/or instructional design, school improvement and other related tasks and professional functions.

##### **COMPLIANCE COSTS:**

The rule is necessary to implement Education Law section 211-d and does not impose any significant, additional costs beyond those inherent in the statute.

The new requirements will result in additional costs, as follows:

##### **(i) Sustained Professional Development**

Assuming the need for two extra days per year of sustained professional development for contract of excellence programs, for one to two dozen teachers per district at a cost of \$125 per teacher per day, it is estimated there might be a total annual cost for all of the districts of \$400,000 per year (for purposes of this calculation, NYC was treated as thirty-four districts - one high school district, one special education district and thirty-two community school districts).

##### **(ii) Other Costs**

Depending on a district's selection of allowable programs and activities, there may be additional costs. Particular activities where the cost imposed could be large include: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs must be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-based intervention; and analyzing, gathering and compiling the necessary research to support their proposed contract for excellence programs and activities. To approximate the total yearly costs associated with these items, it is estimated that each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new, appropriately certified teachers at an annual cost of \$53,000 per teacher (salary plus benefits). This yields a total estimated, annual cost of \$9,435,000 for all contract districts.

##### **(iii) Public Process Costs**

Costs are associated with providing notice of the public comment period and public hearings, including translations where applicable, and preparation of the public comment record and assessment. Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural is around \$7. A half page, posted twice during the comment period, results in about \$1,000 costs: ( \$7 per inch X 70 inches X 2 days = \$980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of \$115,000: African-American Observer (\$59 per inch X 70 inches X 2 = \$8,260); El Diario/La Prensa (\$60 X 70 X 2 = \$8,400); and the New York Post (\$711 X 70 X 2 = \$99,540).

We anticipate minimal costs for preparation of the public comment record and assessment, to be absorbed using existing staff and resources.

##### **(iv) Complaint Process Costs**

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000 word legal document into Latin-American Spanish could be procured for \$165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost \$650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint processes can be included within other translating functions performed by the City's Department of Education, including central-

ized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These two documents could also be posted to the district's website, or be sent out via other mailings, thereby incurring a small marginal cost.

The rule also requires districts make reasonable efforts to investigate complaints by parents, and notify the complainants of their determination within 30 days of its receipt. The rule provides for appeal procedures. These costs are hard to estimate and should vary by the size and scope of the contract and its allowable program activities. We anticipate the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its public prominence as a school improvement initiative. We might expect more complaints initially and fewer over time as the public process for developing contracts results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, \$500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were \$400 million in 2008-09 (this figure was \$428 million in 2007-08), the cost statewide would be \$400,000.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The economic and technological feasibility of compliance with the rule is facilitated in that the rule imposes very few compliance and no paperwork requirements not already imposed by the authorizing statute. Those reporting requirements imposed by the statute are made feasible in that they are generally automated and web-based, using data entry screens and edit checks. Nothing would prohibit districts from using funds to procure professional services, such as certified professional accountants, software developers or experts in curriculum and instruction, or education research, all of whom may be necessary to meet the rule's requirements.

#### MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 211-d and is applicable to all identified school districts throughout the State. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt districts from the rule's coverage. A substantial effort was made to involve districts in the development of this rule, and to the extent possible, the rule has been drafted incorporating their comments, to provide flexibility in implementing many of the provisions.

#### LOCAL GOVERNMENT PARTICIPATION:

The Department sent guidance memos to school districts and their component schools on April 4, April 9, June 21 and June 25, 2007, seeking the input, impact, questions and feedback of the rule on districts, as well as communicating in broad terms, how the contract would be implemented. Moreover, on April 12, 2007 districts were invited to meet with key Department stakeholders, including teleconferencing abilities for those district personnel unable to travel to Albany. Department staff were available to respond to questions from 9 AM to 7:30 PM, from April 9-12. Copies of the rule were also provided to District Superintendents with the request they distribute it to school districts for review and comment.

Following approval of the contracts by the Commissioner in November 2007, a meeting was held in Troy, New York on December 19, 2007 to engage in collaborative discussions with representatives of each Contract for Excellence school districts. 82 superintendents and school district representatives attended the full-day session, along with many others participating via a web cast. Constructive feedback was sought and received on what worked well in the first year and areas for improvement. Changes to the proposed 2008-2009 legislation, regulations and the on-line contract system have been made and will continue to develop as a direct result of these meetings and discussions.

#### **Rural Area Flexibility Analysis**

##### TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule applies to the school districts in the State, so identified pursuant to Education Law section 211-d as having to file a contract for excellence, 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. Eight (8) of the school districts that will have to file contracts for excellence for the 2007-2008 school year are rural school districts.

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

Each district identified in the statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on the allowable programs and activities chosen, the rule mandates or requires certain actions.

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

School districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings on their proposed contracts, and provide reasonable notice to parents and persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c. The notice shall include:

- (1) a general description of the contract;
- (2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;
- (3) information where to obtain a copy of the proposed contract; and
- (4) a description of the public comment process and public hearing process. Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for use.

Districts shall provide reasonable notice to parents of students or persons in parental relation to students of the procedures for bringing a complaint concerning implementation of the contract for excellence, and provide translations of the complaint form and procedures into the languages other than English most commonly spoken in the district.

Each district shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website. Districts may use additional methods to provide notice, including making copies available in schools and district offices, and including copies in district mailings and distributions.

The building principal, community superintendent or superintendent, as applicable shall notify the complainant in writing of his or her complaint determination, including the basis for such determination within 30 days from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify the complainant in writing of the appeal determination, including the basis for such determination, and an explanation of the appeal procedures.

Upon appeal of the complaint determination, or an appeal determination of a superintendent or community superintendent, to the trustees/board of education or chancellor, the trustees, board or chancellor shall provide written notice of the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law section 310.

Depending on which allowable programs and activities are chosen, districts may be required to hire or procure experts in: teacher professional development, curriculum and/or instructional design, school improvement and other related tasks and professional functions.

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

#### COSTS:

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

The new requirements will result in additional costs to school districts, as follows:

##### (i) Sustained Professional Development

If it is assumed that there will need to be two extra days per year of sustained professional development for contract of excellence programs, for one to two dozen teachers per district at a cost of \$125 per teacher per day, it is estimated that there might be a total annual cost for all of the districts of \$400,000 per year (for purposes of this calculation, NYC was treated as thirty-four districts – one high school district, one special education district and thirty-two community school districts).

## (ii) Other Costs

Depending on a district's selection of allowable programs and activities, it is possible that there will be additional costs. Particular activities where the cost imposed could be large include the following: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs must be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-based intervention; and analyzing, gathering and compiling the necessary research to support their proposed contract for excellence programs and activities. To approximate the total yearly costs associated with these items, it is estimated that each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new, appropriately certified teachers at an annual cost of \$53,000 per teacher (salary plus benefits). This yields a total estimated, annual cost of \$9,435,000 for all contract districts.

## (iii) Public Process Costs

Costs are associated with providing notice of the public comment period and public hearings, including translations where applicable, and preparation of the public comment record and assessment. Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural is around \$7. A half page, posted twice during the comment period, results in about \$1,000 costs: ( \$7 per inch X 70 inches X 2 days = \$980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of \$115,000: African-American Observer (\$59 per inch X 70 inches X 2 = \$8,260); El Diario/La Prensa (\$60 X 70 X 2 = \$8,400); and the New York Post (\$711 X 70 X 2 = \$99,540).

We anticipate minimal costs for preparation of the public comment record and assessment, to be absorbed using existing staff and resources.

## (iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000 word legal document into Latin-American Spanish could be procured for \$165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost \$650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint processes can be included within other translating functions performed by the City's Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These two documents could also be posted to the district's website, or be sent out via other mailings, thereby incurring a small marginal cost.

The rule also requires districts make reasonable efforts to investigate complaints by parents, and notify the complainants of their determination within 30 days of its receipt. The rule provides for appeal procedures. These costs are hard to estimate and should vary by the size and scope of the contract and its allowable program activities. It is expected that the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its public prominence as a school improvement initiative. One might also expect to see more complaints initially and fewer over time as the public process for developing contracts for excellence results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, \$500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were \$400 million in 2008-09 (this figure was \$428 million in 2007-08), the cost statewide would be \$400,000.

## MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007 and is applicable to all identified school districts throughout the State. Consequently, the major 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. Nevertheless, a substantial effort was made to involve school districts, including rural districts, in the development of this rule, and to the extent possible, the proposed rule has been drafted incorporating their comments, to provide flexibility in implementing many of the provisions.

## RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department's Rural Education Advisory Committee that includes representatives of school districts in rural areas as well as the Rural Schools Association. Guidance memos to school districts and their component schools were sent out from the Senior Deputy Commissioner for P-16 education of the State Education Department on April 4, April 9, June 21 and June 25, 2007. In these documents, the Education Department sought the input, impact, questions and feedback of the proposed rule on districts as well as communicating in broad terms, how the contract would be implemented. Moreover, on April 12, 2007 districts were invited to meet with key Department stakeholders, including teleconferencing abilities for those district personnel unable to travel to Albany. In these memoranda, the Department communicated that staff in the Department's Office of School Operations and Management Services were available to respond to questions from 9 AM to 7:30 PM, from April 9-12. Copies of the proposed rule were also provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment.

Following approval of the contracts by the Commissioner in November 2007, a meeting was held in Troy, New York on December 19, 2007 to engage in collaborative discussions with representatives of each Contract for Excellence school districts. 82 superintendents and school district representatives attended the full-day session, along with many others participating via a web cast. Constructive feedback was sought and received on what worked well in the first year and areas for improvement. Changes to the proposed 2008-2009 legislation, regulations and the on-line contract system have been made and will continue to develop as a direct result of these meetings and discussions.

**Job Impact Statement**

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on August 15, 2007, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, is necessary to implement Education Law section 211-d, as added by Chapter 57 of the Laws of 2007, to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts. 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.

**Assessment of Public Comment**

The agency received no public comment since publication of the last assessment of public comment.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Education, Experience, Examination and Endorsement Provisions for Licensure of Speech-Language Pathologists and Audiologists

I.D. No. EDU-15-08-00004-P

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

**Proposed action:** Addition of sections 52.36, 52.37, 75.1, 75.2, 75.3, 75.4, 75.5, 75.6 and 75.7, repeal of sections 75.1, 75.2 and 75.3 and renumbering of section 75.4 to 75.8 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6506(5) and (6), 6507(1), (2)(a) and (4)(a), 8206(2), (3) and (4)

**Subject:** Education, experience, examination and endorsement provisions for licensure of speech-language pathologists and audiologists.

**Purpose:** To conform to New York State requirements for licensure as a speech pathologist or audiologist to current developments and terminology in the field, align these regulations with Federal Medicaid requirements and expand opportunities for qualified speech-language pathologists and audiologists in other jurisdictions to become licensed in New York State.

**Substance of proposed rule (Full text is posted at the following State website: [www.op.nysed.gov](http://www.op.nysed.gov)):** The Board of Regents proposes to add sections 52.36, 52.37, 75.1, 75.2, 75.3, 75.4, 75.5, 75.6 and 75.7, repeal sections 75.1, 75.2 and 75.3 and renumber section 75.4 to 75.8 of the Regulations of the Commissioner of Education, effective July 17, 2008.

Sections 52.36(a)(1) and (2) define “acceptable certifying agency” and “supervision” for purposes of this section.

Section 52.36(b) sets forth the requirements for a registered program leading to licensure in speech-language pathology.

Section 52.36(b)(1) requires that a registered program leading to licensure in speech-language pathology be a program in speech-language pathology leading to a master’s or higher degree from a college or university acceptable to the department or its equivalent, which includes at least 75 semester hours or the equivalent, provided that at least 36 semester hours of the program have been at the master’s or higher degree level.

Section 52.36(b)(2) sets forth the curricular content for a registered program in speech-language pathology.

Section 52.36(b)(3) requires that a registered program leading to licensure in speech-language pathology include a practicum in speech-language pathology of at least 400 clock hours under supervision, at least 375 clock hours of which shall be in direct client contact, at least 25 clock hours of which shall be in clinical observation, and at least 325 clock hours of which shall be at the master’s or higher degree level.

Section 52.37(a) defines acceptable certifying agency and supervision for purposes of this section.

Section 52.37(b) sets forth the requirements for a registered program leading to licensure in audiology.

Section 52.37(b)(1) requires that a registered program leading to licensure in audiology be a program in audiology leading to a master’s or higher degree from a college or university acceptable to the department, which includes at least 75 semester hours at the graduate level, or its equivalent.

Section 52.37(b)(2) requires that a registered program leading to licensure in audiology contain curricular content that includes, but is not limited to: at least 12 semester hours in human communication processes and sciences, at least 36 semester hours in professional practice areas in audiology, and 27 additional semester hours in the above or related areas.

Section 52.37(b)(3)(i) requires that any student completing a doctoral degree program in audiology complete through the course of such program not less than 1,820 clock hours of graduate clinical experience under supervision, of a scope and nature satisfactory to the State Board for Speech-Language Pathology and Audiology.

Section 52.37(b)(3)(ii) requires that any student completing a master’s degree program in audiology, or its equivalent, shall have completed throughout the course of his/her educational program 300 clock hours of practicum under supervision, provided that no more than half of the total semester hours for the program may be advanced standing credit granted for speech-language pathology study at the baccalaureate level.

Section 75.1(a) defines “acceptable accrediting agency”.

Section 75.1(b) sets forth the professional education requirements for licensure as a speech-language pathologist in New York State, including completion of a master’s or higher degree program in speech-language pathology that is either registered by the department pursuant to Section 52.36, or accredited by an acceptable accrediting agency, or from a program determined by the department to be a speech-language pathology program equivalent to such a registered or accredited program.

Section 75.2(a) and (b) require an applicant seeking licensure as speech-language pathologist to complete 36 weeks of supervised experience within four years following completion of an educational program meeting the requirements of section 75.1 of the Regulations of the Commissioner of Education. Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than 12 hours per week for continuous periods of not less than six months.

Section 75.2(c)(1) and (2) states that supervised experience shall include meeting with and observing the applicant on a regular basis to review and evaluate such supervised experience and to foster professional development. Supervision shall also include regular observation of the applicant while the applicant is providing assessment and intervention services and shall take place at the beginning and periodically throughout treatment.

Section 75.2(c)(3) requires that the supervisor be familiar with the applicant’s treatment plans and have ongoing involvement in the care provided, and shall review the need for ongoing services.

Section 75.2(c)(4) requires that the supervision be provided by the organization in which the applicant is working, and by an individual who is licensed in New York State in speech-language pathology, except that supervision of experience acquired outside New York State or in an exempt setting as established in section 8207 of the Education Law may be provided by a person approved for supervision by an acceptable certifying agency as defined in section 52.36 of the Commissioner’s Regulations, or by a person holding the Certificate of Clinical Competence of the American Speech-Language Hearing Association.

Section 75.3 is added to define the examination requirement for speech-language pathology licensure as one determined by the department to be acceptable for licensure as a speech-language pathologist.

Section 75.4(a) defines “acceptable accrediting agency” for purposes of this section.

Section 75.4(b) sets forth the professional education requirements for applicants seeking licensure as an audiologist prior to January 1, 2009, including satisfactory evidence of completion of a program in audiology registered by the department or determined by the department to be the equivalent and receipt of a master’s degree in audiology, or the equivalent. To be considered the equivalent of a master’s degree in audiology, the applicant’s educational program must culminate in a graduate degree from a college acceptable to the department and shall include a practicum and 60 semester hours of certain courses, as delineated in this subdivision.

Section 75.4(c) sets forth the professional education requirements for applicants seeking licensure as an audiologist after January 1, 2009, including completion of a master’s or higher degree program in audiology, that is either registered by the department pursuant to Section 52.37, or accredited by an acceptable accrediting agency, or from a program determined by the department to be an audiology program equivalent to such a registered or accredited program.

Sections 75.5(a)(1), (2) and (3) set forth the experience requirements for persons applying for licensure as an audiologist prior to January 1, 2009, requiring such applicant to have completed not less than nine months of supervised experience of a scope and nature satisfactory to the State Board for Speech-Language Pathology and Audiology with not more than two employers, within the two-year period following completion of an educational program that meets the requirements of section 75.4 of this Part. Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than two days per week and consisting of not less than 15 hours per week for continuous periods of not less than six months.

Section 75.5(a)(3) defines “supervision”.

Sections 75.5(b)(1)(i) and (ii) set forth the experience requirements for persons applying for licensure as an audiologist after January 1, 2009, requiring an applicant who has satisfactorily completed the master’s degree program to complete 1,520 hours of supervised experience within four years following completion of the program, or its equivalent and such experience shall be obtained by not more than two employers. Credit toward such experience may be given for part-time employment accumulated at not less than 12 hours per week for continuous periods of not less than six months.

Section 75.5(b)(2) states that no experience shall be required of an applicant seeking licensure as an audiologist who has met the professional educational requirement for licensure by satisfactorily completing the doctoral degree program requirements.

Section 75.5(b)(3) specifies that supervision of the experience requirement for licensure as an audiologist must include meeting with and observing the applicant on a regular basis and must be provided by an individual who is licensed in New York State as an audiologist, except that supervision of experience acquired outside New York State or in an exempt setting may be provided by a person approved for supervision by an acceptable certifying agency, or by a person holding the Certificate of Clinical Competence of the American Speech-Language Hearing Association, or by a person holding Board Certification in Audiology from the American Board of Audiology.

Section 75.6 is added to define the examination requirement for licensure as an audiologist as one determined by the department to be acceptable for licensure as an audiologist.

Section 75.7 is added to provide for licensure by endorsement in speech-language pathology or audiology.

Section 75.7(a) specifies that subdivision (b) describes the process for endorsement of a license in speech-language pathology or audiology is-

sued by another state or territory of the United States and that subdivision (c) lists the requirements for endorsement of a license in speech-language pathology or audiology issued by another country.

Section 75.7(b) lists the requirements for licensure by endorsement of license in speech-language pathology or audiology issued by another state or territory of the United States.

Section 75.7(b)(1) requires an applicant seeking endorsement of a license by another state or territory of the United States to meet the requirements of section 59.6 of this Title.

Section 75.7(b)(2) requires an applicant seeking endorsement of a license by another state or territory of the United States to present evidence acceptable to the department of completion of a satisfactory program in speech-language pathology or audiology that includes a practicum and a minimum of 60 semester hours in speech-language pathology or audiology, as appropriate, or the equivalent.

Section 75.7(b)(3) requires an applicant seeking endorsement of a license by another state or territory to provide evidence satisfactory to the State Board for Speech-Language Pathology and Audiology of at least two years of acceptable professional experience in speech-language pathology or audiology, as appropriate, provided that such experience occurs following licensure in such jurisdiction and within the six years immediately preceding application for licensure by endorsement in New York State.

Section 75.7(b)(4) requires the applicant for endorsement to meet the examination requirements prescribed in section 75.3 or 75.6 of this Part, as applicable.

Section 75.7(b)(5) requires an applicant seeking endorsement of a license from another state or territory of the United States to hold certification from an acceptable certifying agency such as the American Speech and Hearing Association.

Section 75.7(b)(6) requires an applicant seeking endorsement of a license from another state or territory of the United States to present evidence acceptable to the department of good standing as a licensee in each jurisdiction in which the applicant is licensed to practice speech-language pathology or audiology.

Section 75.7(c) lists the requirements for endorsement of a license in speech-language pathology or audiology issued by another country.

Section 75.7(c)(1) requires an applicant seeking endorsement of a foreign license to meet the requirements of section 59.6 of this Title.

Section 75.7(c)(2) requires the applicant for endorsement to present evidence acceptable to the department of completion of a satisfactory program in speech-language pathology or audiology, as appropriate, or the equivalent of such a program.

Section 75.7(c)(3) requires an applicant seeking endorsement of a foreign license to provide evidence satisfactory to the State Board for Speech-Language Pathology and Audiology of at least three years of professional experience, acceptable to such board, in speech-language pathology or audiology, as applicable, provided that such experience occurs following licensure in such jurisdiction and within the six years immediately preceding application for licensure by endorsement in New York State.

Section 75.7(c)(4) requires the applicant for endorsement to meet the examination requirements prescribed in section 75.3 or 75.6 of this Part, as applicable, or pass a written examination for licensure in the country in which the applicant is licensed to practice speech-language pathology or audiology, as appropriate, which examination is satisfactory to the department.

Section 75.7(c)(5) requires an applicant seeking endorsement of a foreign license to hold certification from an acceptable certifying agency.

Section 75.7(c)(6) requires the applicant for endorsement to present evidence acceptable to the department of good standing as a licensee in each jurisdiction in which the applicant is licensed to practice speech-language pathology or audiology.

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

**Data, views or arguments may be submitted to:** Frank Munoz, Associate Commissioner, Office of the Professions, State Education Department, 2nd Fl., West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3817 ext. 470, e-mail: opopr@mail.nysed.gov

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

#### **Regulatory Impact Statement**

##### 1. STATUTORY AUTHORITY:

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

Section 212 of the Education Law authorizes the department to charge fees for certificates or permits through regulations.

Section 6504 of the Education Law grants the Board of Regents authority to supervise and the Education Department authority to administer the licensing of the professions.

Subdivision (5) of section 6506 of the Education Law authorizes the Board of Regents to waive education, experience and examination requirements for a professional license if the Board of Regents is satisfied that the requirements for such profession have been substantially met.

Subdivision (6) of section 6506 of the Education Law authorizes the endorsement of licenses from other jurisdictions and paragraphs (b), (c), and (d) of that subdivision authorize the promulgation of regulations establishing the education, experience, and examination requirements for such endorsements.

Subdivision (1) of section 6507 of the Education Law authorizes the Commissioner and the Education Department to administer the admission and the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations to administer the practice of the professions.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivisions (2), (3), and (4) of section 8206 of the Education Law authorizes the Commissioner to promulgate regulations relating to the education, experience and examination requirements for licensure as a speech-language pathologist or audiologist.

#### 2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statutes in that it updates the requirements for licensure as a speech-language pathologist and audiologist by increasing the number of educational courses required; updating course descriptions; decreasing the length of the experience requirement, as well as clarifying the supervision under which experience must take place; broadening the language regarding selection of the licensing examinations; and detailing endorsement provisions for out-of-state and foreign applicants in these two professions. The proposed amendment also establishes standards for registered educational programs leading to licensure in these professions.

#### 3. NEEDS AND BENEFITS:

The proposed amendment conforms New York State requirements for licensure to current developments and terminology in the field, aligns these regulations with federal Medicaid requirements, and expands opportunities for qualified speech-language pathologists and audiologists in other jurisdictions to become licensed in New York State, thus helping to address shortages that exist within New York.

#### 4. COSTS:

(a) Costs to State Government: The amendment will not impose any additional cost on State government.

(b) Costs to local government: None. In fact, promulgation of the proposed amendments will address issues that have been raised concerning the eligibility of school districts for Medicaid reimbursement for speech-language pathology services provided to students with disabilities.

(c) Costs to private regulated parties: None. The proposed amendment will not impose any cost on private regulated parties.

(d) Cost to the regulatory agency: As stated above in Costs to State Government, the proposed amendment does not impose costs on the State Education Department.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment addresses the requirements to qualify for a New York State license as a speech-language pathologist or audiologist. It does not impose any program, service, duty or responsibility upon local governments.

#### 6. PAPERWORK:

The proposed amendment will not require any additional paperwork from the licensee.

#### 7. DUPLICATION:

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

#### 8. ALTERNATIVES:

There are no viable alternatives to the proposed changes, and none were considered.

9. FEDERAL STANDARDS:

There are no general Federal standards for the requirements to be licensed as a speech-language pathologist or audiologist. 42 C.F.R. '440.110(c)(2) defines the qualifications of a speech-language pathologist, for Medicaid purposes only.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

**Regulatory Flexibility Analysis**

The proposed regulation concerns requirements that an individual must meet to become licensed in the professions of speech-language pathology and audiology. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

**Rural Area Flexibility Analysis**

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to applicants seeking licensure as speech-language pathologists and audiologists in New York State. The proposed amendment seeks to change New York State licensure requirements to conform to current developments and terminology in the field, to align these regulations with federal Medicaid requirements, and expand opportunities for qualified speech-language pathologists and audiologists in other jurisdictions to become licensed in New York State. Applicants for licensure in these fields include individuals 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. At the present time, there are 12,463 speech-language pathologists and 1,246 audiologists licensed and registered to practice in New York State. Of these, 1,870 speech-language pathologists and 169 audiologists reported that their permanent address of record is in a rural county. The proposed amendment will affect the estimated 750 speech-language pathologists, and 50 audiologists, who apply for licensure in New York State each year.

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

The proposed amendment seeks to amend New York State licensure requirements to conform to current developments and terminology in the field, to align these regulations with federal Medicaid requirements, and expand opportunities for qualified speech-language pathologists and audiologists in other jurisdictions to become licensed in New York State. The changes do not impose any additional reporting or recordkeeping requirements on licensees, including those located in rural areas, beyond those currently imposed by regulation. In addition, the amendment does not require regulated parties to hire professional services in order to comply.

3. COSTS:

The proposed amendment will not impose costs beyond those currently required to comply with statutory and regulatory requirements for licensure as a speech-language pathologist or audiologist.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment revises the education, experience, examination and endorsement requirements for the licensure of speech-language pathologists and audiologists in New York State. These requirements are in place to ensure competency of licensed professionals and thereby safeguard the public.

Due to the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the New York State Speech-Language Hearing Association, which is a statewide organization whose membership includes individuals who live or work in rural areas.

**Job Impact Statement**

The purpose of the proposed changes is to update New York State's education, examination, experience, and endorsement provisions for licensure of speech language pathologists and audiologists. Because of the nature of the changes, the changes will have no adverse impact on jobs or employment opportunities. In fact, the changes may have a positive effect on jobs in that they will provide school districts with an expanded pool of candidates from which to fill speech-language pathology positions for which there is currently a shortage of available licensees.

Because it is evident from the nature of the proposed changes, that the proposed changes will have no adverse impact on jobs or employment opportunities in the fields of speech-language pathology and audiology or any other field, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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

**Requirements for Course Work or Training in the Needs of Students with Autism and Autism Spectrum Disorders**

**I.D. No.** EDU-15-08-00009-P

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

**Proposed action:** Amendment of sections 52.21 and 80-3.7, addition of Subpart 57-3 and section 80-1.12 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 208 (not subdivided), 212(3), 305(1) and (2), 3004(1), (4) and (5) and 3007 (not subdivided)

**Subject:** Requirements for course work or training in the needs of students with autism and autism spectrum disorders.

**Purpose:** To require teachers seeking certification in special education to have course work or training in the needs of students with autism and autism spectrum disorders; and establish standards for Education Department approval of providers of course work or training in autism and autism spectrum disorders.

**Text of proposed rule:** Pursuant to sections 207, 212, 208, 305, 308, 3001, 3004, 3006, 3007 and 3009 of the Education Law.

1. Subclause (1) of clause (b) of subparagraph (vi) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective July 17, 2008, as follows:

(1) study in the following:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) use of assistive and instructional technology in the teaching of and learning by students with disabilities; [and]

(viii) . . .

(ix) *understanding the needs of students with autism and autism spectrum disorders, including but not limited to the etiology, prevalence and characteristics of autism and autism spectrum disorders; evidence-based instructional methods for teaching students with autism and autism spectrum disorders, instructional design and supports including socialization skills, communication and skill generalization and maintenance; positive behavioral supports, functional behavior assessments and behavior intervention plans for students with autism and autism spectrum disorders; collaboration and cooperation in the home, class, school and community and the concept of least restrictive environment for students with autism and autism spectrum disorders and the integration of such students in the class, school and community; and family supports, including the knowledge of resources that are available to support students with autism and autism spectrum disorders and their families such as early childhood supports, respite care, state agencies, transitional support services and vocational rehabilitation services and advocacy groups and associations; and*

2. Subpart 57-3 of the Regulations of the Commissioner of Education is added, effective July 17, 2008, as follows:

**SUBPART 57-3**

*Training in Autism and Autism Spectrum Disorders*

§ 57-3.1 Purpose.

*The purpose of this Subpart is to set forth standards for approval and the approval process for providers of course work or training in the needs of students with autism and autism spectrum disorders that is offered to candidates for a teachers' certificate or license in any of the following classroom teaching titles: students with disabilities in early childhood, childhood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing; and blind and visually impaired and for school administrators, to the extent required by section 3004 of the Education Law.*

§ 57-3.2 Definitions.

As used in this Subpart:

(a) *course work or training means course work or training in the needs of students with autism and autism spectrum disorders.*

(b) *provider means any teachers' or professional organization or association, school district, board of cooperative educational services, non-public school, institution of higher education, hospital, health care facility, government agency or office, social service agency, or any other organization that has as its purpose the provision of course work or training in the needs of students with autism and autism spectrum disorders, and that is approved by the department to offer such course work or training pursuant to section 3004 of the Education Law.*

§ 57-3.3 Filing of application for approval as a provider.

(a) *A person or organization seeking approval as a provider shall submit to the department, an application on forms prescribed by the commissioner, with a fee of \$600.*

(b) *To be approved, each applicant shall submit evidence acceptable to the department that the applicant:*

(1) *has and will maintain adequate resources to offer the course work or training;*

(2) *has and will ensure that faculty and educational specialists who will offer the course work or training have demonstrated by training, earned degrees or experience, their competence to offer the course work or training. The faculty or educational specialists who offer such course work or training must hold at least a master's degree; and have specialized training in autism and autism spectrum disorders or shall have demonstrated, in other widely recognized ways, their specialized knowledge in the area of autism and autism spectrum disorders, as determined by the department; and*

(3) *certifies in writing that the course work or training will be conducted through use of a curriculum which, at a minimum, includes the syllabus prepared by the department; and*

(4) *certifies, in writing, that certification of completion forms obtained from the department will be issued to students upon completion of the course work or training for their use in documenting satisfaction of the requirement of course work or training in autism and autism spectrum disorders, as required under section 3004 of the Education Law.*

§ 57-3.4 Term of approval as a provider.

(a) *Providers shall be approved for a period of six years, except that the approved status of such providers may be terminated during this term by the department in accordance with section 57-3.6 of this Subpart.*

(b) *At the expiration of said term, the provider may reapply to the department for approval following the requirements of section 57-3.3 of this Subpart, including payment of the required fee.*

§ 57-3.5 Responsibility of providers.

(a) *Pursuant to the requirements of section 3004 of the Education Law, a provider, at a minimum, shall offer the syllabus prepared by the department. However, nothing in this section shall preclude providers from offering additional course work or training which exceeds, or expands upon, the two hour syllabus prescribed by the department.*

(b) *An approved provider of such course work or training shall execute a certification of completion of each person completing course work or training, and within 21 calendar days of the completion of course work or training, the provider shall submit the certification of completion to the person completing the course work or training for that person's use in documenting such completion.*

(c) *The provider shall retain a copy of the certification of completion in the provider's files for not less than six years from the date of completion of course work or training.*

(d) *In the event that an approved provider discontinues offering course work or training, all copies of certifications of completion issued within the six years prior to such discontinuance shall be transferred to the department.*

(e) *Course work or training shall be taught by instructors who have demonstrated by training, education and experience their competence to teach the course content prescribed in subdivision (a) of this section.*

§ 57-3.6 Review of providers by the department.

(a) *The department may review approved providers during the term of approval to ensure compliance with the requirements of this Subpart and may request information from a provider and may conduct site visits, pursuant to such review.*

(b) *A determination by the department that the services offered by a provider are inadequate, incomplete or otherwise unsatisfactory pursuant to the standards set forth in this Subpart shall result in the denial or termination of the approved status of the provider.*

§ 57-3.7 Exemption.

*An institution that offers a registered program leading to certification in any of the following classroom teaching titles: students with disabilities in early childhood, childhood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing and blind; and visually impaired, pursuant to section 52.21 of this Title, shall be deemed approved, pursuant to this Subpart, for purposes of offering coursework or training in autism and autism spectrum disorders within such program to students in the program.*

3. A new Section 80-1.12 of the Regulations of the Commissioner of Education is added, effective July 17, 2008, as follows:

*Section 80-1.12 Required study in autism and autism spectrum disorders for certificates in certain classroom teaching titles.*

*All candidates for a certificate or license valid for a certificate in the classroom teaching titles of students with disabilities in early childhood, childhood, middle childhood or adolescence; deaf and hard of hearing; blind and visually impaired and speech and language disabilities, who apply for a certificate or license on or after September 2, 2009, shall have completed at least two clock hours of coursework or training in autism or autism spectrum disorders, as required by section 3004 of the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-3 of this Title.*

4. Paragraph 3 of subdivision (a) of Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective July 17, 2008, as follows:

(3) *Additional requirements. A candidate seeking to fulfill the education requirement for the initial certificate through individual evaluation of education requirements shall meet the additional requirements in this paragraph or their substantial equivalent as determined by the commissioner, if so prescribed for that certificate title, in addition to the general requirements prescribed in paragraph (2) of this subdivision.*

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) *Students with disabilities (birth-grade 2).*

(a) . . .

(b) . . .

(c) *For candidates applying for a certificate or license on or after September 2, 2009, the candidate shall complete study in autism and autism spectrum disorders, as prescribed in section 80-1.12 of this Part, or its equivalent as determined by the commissioner.*

(vi) *Students with disabilities (grades 1-6).*

(a) . . .

(b) . . .

(c) *For candidates applying for a certificate or license on or after September 2, 2009, the candidate shall complete study in autism and autism spectrum disorders, as prescribed in section 80-1.12 of this Part, or its equivalent as determined by the commissioner.*

(vii) *Students with disabilities (grades 5-9).*

(a) . . .

(b) . . .

(c) *For candidates applying for a certificate or license on or after September 2, 2009, the candidate shall complete study in autism and autism spectrum disorders, as prescribed in section 80-1.12 of this Part, or its equivalent as determined by the commissioner.*

(viii) *Students with disabilities (grades 7-12).*

(a) . . .

(b) . . .

(c) *For candidates applying for a certificate or license on or after September 2, 2009, the candidate shall complete study in autism and autism spectrum disorders, as prescribed in section 80-1.12 of this Part, or its equivalent as determined by the commissioner.*

(ix) *Deaf and hard of hearing (all grades).*

(a) . . .

(b) . . .

(c) *For candidates applying for a certificate or license on or after September 2, 2009, the candidate shall complete study in autism and autism spectrum disorders, as prescribed in section 80-1.12 of this Part, or its equivalent as determined by the commissioner.*

(x) *Blind or visually impaired (all grades).*

(a) . . .

(b) . . .

(c) *For candidates applying for a certificate or license on or after September 2, 2009, the candidate shall complete study in autism and*

autism spectrum disorders, as prescribed in section 80-1.12 of this Part, or its equivalent as determined by the commissioner.

(xi) Speech and language disabilities (all grades).

(a) . . .

(b) . . .

(c) For candidates applying for a certificate or license on or after September 2, 2009, the candidate shall complete study in autism and autism spectrum disorders, as prescribed in section 80-1.12 of this Part, or its equivalent as determined by the commissioner.

(xii) . . .

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

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

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

**Regulatory Impact Statement**

**1. STATUTORY AUTHORITY:**

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

Section 208 of the Education Law grants to the Board of Regents authority to award and confer certificates, diplomas and degrees.

Subdivision (3) of section 212 of the Education Law authorizes the Department to fix by regulation fees for certification or permits for which fees are not otherwise provided under the Education Law.

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

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

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

Subdivision (4) of section 3004 of the Education Law, as added by Chapter 143 of the Laws of 2006, requires that all persons applying for a teaching certificate or license in special education or a school administrator who works in special education to complete course work or training in the area of children with autism. This section authorizes the Department to approve institutions and/or providers to provide such course work or training.

Subdivision (5) of section 3004 of the Education Law, as added by Chapter 143 of the Laws of 2006, authorizes the Commissioner of Education to prescribe the necessary regulations to establish programs and training related to the needs of students with autism and to approve providers and institutions to provide such course work and training.

Section 3007 of the Education Law authorizes the Commissioner of Education to endorse a diploma or certificate issued in another state.

**2. LEGISLATIVE OBJECTIVES:**

The proposed amendment is necessary to implement Education Law Section 3004(4), (5), as added by Chapter 143 of the Laws of 2006, by requiring teachers seeking certification in certain special education titles to have course work or training in the needs of students with autism and autism spectrum disorders and establishing standards for Education Department approval of providers of such course work or training.

**3. NEEDS AND BENEFITS:**

The proposed amendment is necessary to implement Education Law section 3004(4) and (5), by requiring teachers seeking certification in certain special education classroom teaching titles to have course work or training in the needs of students with autism and autism spectrum disorders and establishing standards for Education Department approval of providers of such course work or training.

**4. COSTS:**

(a) Costs to State government: The amendment will not impose any significant additional costs on State government including the State Education Department. The amendment will minimally affect the State Education Department's staffing and resources in reviewing and processing

applications for certificates under individual transcript evaluation and in reviewing and processing applications for providers and monitoring approved providers.

(b) Costs to local governments: School districts and BOCES seeking status as an approved provider will be required submit an application fee of \$600 to the Department. If granted, the provider receives approval for a six-year period, at the expiration of which, the provider must reapply. Proposed section 57-3.7 provides for an exemption to an institution that offers a registered program leading to certification in the following classroom teaching titles: students with disabilities in early childhood, childhood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing and blind and visually impaired, pursuant to 8 NYCRR section 52.21, in which case the institution shall be deemed approved by the Department, for purposes of offering course work or training within such program to students in the program.

(c) Cost to private regulated parties: The proposed amendment will impose a cost of \$600 on private regulated parties that select to apply to become an approved provider of the required course work or training. Proposed section 57-3.7 provides for an exemption to an institution that offers a registered program leading to certification in the following classroom teaching titles: students with disabilities in early childhood, childhood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing and blind and visually impaired, pursuant to 8 NYCRR section 52.21, in which case the institution shall be deemed approved by the Department, for purposes of offering course work or training within such program to students in the program.

For candidates seeking certification as a teacher in special education through individual evaluation pursuant to Section 80-3.7 of the Regulations of the Commissioner of Education, there is no additional cost to the applicant to apply for certification, but the candidate may need to pay a fee to take the two-hour course. This fee is estimated to be \$75.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will impose minimal additional costs on the State Education Department.

**5. LOCAL GOVERNMENT MANDATES:**

School districts and BOCES seeking status as an approved provider must submit an application and a \$600 fee to the Department and will be required to:

(1) offer at least two clock hours of course work or training in autism including, but not limited to, understanding the needs of students with autism and autism spectrum disorders, the etiology, prevalence and characteristics of autism and autism spectrum disorders; evidence-based instructional methods for teaching students with autism and autism spectrum disorders, instructional design and supports including socialization skills, communication and skill generalization and maintenance; positive behavioral supports, functional behavior assessments and behavior intervention plans for students with autism and autism spectrum disorders; collaboration and cooperation in the home, class, school and community and the concept of least restrictive environment for students with autism and autism spectrum disorders and the integration of students in the class, school and community; and family supports including the knowledge of resources that are available to support students with autism and autism spectrum disorders and their families such as early childhood supports, respite care, state agencies, transitional support services and vocational rehabilitation services and advocacy groups and associations; and

(2) execute a certification of completion for each person completing course work or training and, within 21 calendar days of the completion of course work or training, submit the certification of completion to the person completing the course work or training for that person's use in documenting such completion; retain a copy of the certification of completion in the provider's files for not less than six years from the date of completion of course work or training; and in the event that a provider discontinues offering course work or training, all copies of certifications of completion issued within the six years prior to such discontinuance shall be transferred to the Department.

(3) ensure that course work or training shall be taught by instructors who have demonstrated by training, education, and experience their competence to teach the course content.

The Department may approve a provider for a six year period. Upon expiration of the period, the provider may reapply to the Department for approval by submitting a new application and fee.

Proposed section 57-3.7 provides for an exemption to an institution that offers a registered program leading to certification in the following classroom teaching titles: students with disabilities in early childhood, child-

hood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing and blind and visually impaired, pursuant to 8 NYCRR section 52.21, in which case the institution shall be deemed approved by the Department, for purposes of offering course work or training within such program to students in the program.

#### 6. PAPERWORK:

An institution that offers a registered program leading to certification in the following classroom teaching titles: students with disabilities in early childhood, childhood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing and blind and visually impaired, pursuant to 8 NYCRR section 52.21, shall be deemed an approved provider. All other prospective providers must complete an application and submit a \$600 fee. At the expiration of its 6 year term of approval, a provider may reapply to the Department in accordance with the procedures set forth in proposed section 57-3.3, including payment of the required fee. An approved provider shall execute a certification of completion for each person completing course work or training, and within 21 calendar days of completion of the course work or training, the provider shall submit the certification of completion to the person completing the course work or training. The provider shall retain a copy of the certification of completion in the provider's files for not less than 6 years from the date of completion. In the event the provider discontinues offering course work or training, all copies of certifications of completion issued within the 6 years prior to the discontinuance shall be transferred to the Department.

#### 7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements, and is necessary to implement the requirements of Chapter 143 of the Laws of 2006.

#### 8. ALTERNATIVES:

Since these amendments are required by Chapter 143 of the Laws of 2006, no alternatives were considered.

#### 9. FEDERAL STANDARDS:

There are no related Federal standards.

#### 10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with this amendment by its stated effective date.

### **Regulatory Flexibility Analysis**

#### 1. EFFECT OF RULE:

Small business firms providing training services in New York State to teachers in certain classroom teaching titles and administrators may be affected by this proposed amendment if such small businesses seek to become an approved provider. The proposed amendment also applies to each of the 698 school districts and the 37 board of cooperative educational services (BOCES) in the State.

#### 2. COMPLIANCE REQUIREMENTS:

School districts and BOCES, seeking status as an approved provider must submit an application and a \$600 fee to the Department and will be required to:

(1) offer at least two clock hours of course work or training in the needs of students with autism and autism spectrum disorders including, but not limited to, understanding the needs of students with autism and autism spectrum disorders, the etiology, prevalence and characteristics of autism and autism spectrum disorders; evidence-based instructional methods for teaching students with autism and autism spectrum disorders, instructional design and supports including socialization skills, communication and skill generalization and maintenance; positive behavioral supports, functional behavior assessments and behavior intervention plans for students with autism or autism spectrum disorders; collaboration and cooperation in the home, class, school and community and the concept of least restrictive environment for students with autism and autism spectrum disorders and the integration of such students in the class, school and community; and family supports, including the knowledge of resources that are available to support students with autism and autism spectrum disorders and their families such as early childhood supports, respite care, state agencies, transitional support services and vocational rehabilitation services and advocacy groups and associations; and

(2) execute a certification of completion for each person completing course work or training and, within 21 calendar days of the completion of course work or training, submit the certification of completion to the person completing the course work or training for that person's use in documenting such completion; retain a copy of the certification of completion in the provider's files for not less than six years from the date of completion of course work or training; and in the event that a provider discontinues offering course work or training, all copies of certifications of

completion issued within the six years prior to such discontinuance shall be transferred to the Department.

(3) ensure that course work or training shall be taught by instructors who have demonstrated by training, education, and experience their competence to teach the course content.

The Department may approve a provider for a six year period. Upon expiration of the period, the provider may reapply to the Department for approval by submitting a new application and fee.

Proposed section 57-3.7 provides for an exemption to an institution that offers a registered program leading to certification in the following classroom teaching titles: students with disabilities in early childhood, childhood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing and blind and visually impaired, pursuant to 8 NYCRR section 52.21, in which case the institution shall be deemed approved by the Department, for purposes of offering course work or training within such program to students in the program.

An approved provider shall execute a certification of completion for each person completing course work or training, and within 21 calendar days of completion of the course work or training, the provider shall submit the certification of completion to the person completing the course work or training. The provider shall retain a copy of the certification of completion in the provider's files for not less than 6 years from the date of completion. In the event the provider discontinues offering course work or training, all copies of certifications of completion issued within the 6 years prior to the discontinuance shall be transferred to the Department.

#### 3. PROFESSIONAL SERVICES:

The proposed amendment will not impose any additional professional service requirements on small businesses or local governments.

#### 4. COMPLIANCE COSTS:

The proposed amendment will not impose costs on private regulated parties, unless they choose to become an approved provider of the course work or training in autism and autism spectrum disorders. The cost for application to become an approved provider is \$600. If granted, approval would be for a period of six years. At the expiration of this period, reapplication would include submission of a \$600 fee to the Department. Some approved providers may be able to charge fees to individuals taking the course, thereby recovering their costs. Also, section 57-3.7 of the proposed amendment provides an exemption to an institution that offers a registered program leading to certification in certain classroom teaching titles, pursuant to 8 NYCRR 52.21, in which the institution shall be deemed approved by the Department for purposes of offering such course work or training within such program to students in the program.

For a candidate seeking certification in a special education title through individual evaluation pursuant to Section 80-3.7 of the Regulations of the Commissioner of Education, there is no additional cost to the applicant to apply for certification, but the candidate may need to pay a fee to take the two-hour training. This cost is estimated to be \$75.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment imposes no new technological requirements on small businesses, school districts, BOCES or other local governments. Economic feasibility is addressed under the Compliance Costs and Minimizing Adverse Impact sections.

#### 6. MINIMIZING ADVERSE IMPACT:

Only those small businesses that seek status as an approved provider must submit an application fee of \$600 to the State Education Department and meet the requirements of the proposed Subpart 57-3. Organizations approved to offer course work are not prevented by the proposed amendment from charging fees to students taking the course work or training. Because the costs imposed by this rule are minimal and may be defrayed by the fees charged to students, the proposed amendment is not expected to have any adverse economic impact on small businesses. It would be contrary to the public welfare to exempt small businesses from the requirements of the proposed amendment, or impose a lesser standard, because such requirements are designed to assure that approved providers offer adequate training in the needs of students with autism and autism spectrum disorders.

With respect to local governments, only those school districts and BOCES that seek status as an approved provider, would be required to pay the \$600 application fee and meet the requirements of 57-3.3. It would be contrary to the public welfare to exempt such local governments from the requirements of the proposed amendment, or impose a lesser standard, because such requirements are designed to assure that approved providers offer adequate training in the needs of students with autism and autism spectrum disorders.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. Copies of the proposed amendment have also been supplied to a representative sample of small business firms providing similar training services in New York State to teachers, to meet the training requirements for child abuse and reporting under Subpart 53-1 of the Regulations of the Commissioner of Education.

**Rural Area Flexibility Analysis**

1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:

The proposed amendment will affect candidates seeking certification in special education titles and will apply to all school districts and boards of cooperative education services (BOCES) in all areas of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

School districts and BOCES seeking status as an approved provider must submit an application and a \$600 fee to the Department and will be required to:

(1) offer at least two clock hours of course work or training in the needs of students with autism and autism spectrum disorders including, but not limited to, understanding the needs of students with autism and autism spectrum disorders, the etiology, prevalence and characteristics of autism and autism spectrum disorders; evidence-based instructional methods for teaching students with autism and autism spectrum disorders, instructional design and supports including socialization skills, communication and skill generalization and maintenance; positive behavioral supports, functional behavior assessments and behavior intervention plans for students with autism or autism spectrum disorders; collaboration and cooperation in the home, class, school and community and the concept of least restrictive environment for students with autism and autism spectrum disorders and the integration of such students in the class, school and community; and family supports, including the knowledge of resources that are available to support students with autism and autism spectrum disorders and their families such as early childhood supports, respite care, state agencies, transitional support services and vocational rehabilitation services and advocacy groups and associations; and

(2) execute a certification of completion for each person completing course work or training and, within 21 calendar days of the completion of course work or training, submit the certification of completion to the person completing the course work or training for that person's use in documenting such completion; retain a copy of the certification of completion in the provider's files for not less than six years from the date of completion of course work or training; and in the event that a provider discontinues offering course work or training, all copies of certifications of completion issued within the six years prior to such discontinuance shall be transferred to the Department.

(3) ensure that course work or training shall be taught by instructors who have demonstrated by training, education, and experience their competence to teach the course content.

The Department may approve a provider for a six year period. Upon expiration of the period, the provider may reapply to the Department for approval by submitting a new application and fee.

Proposed section 57-3.7 provides for an exemption to an institution that offers a registered program leading to certification in the following classroom teaching titles: students with disabilities in early childhood, childhood, middle childhood or adolescence; speech and language disabilities; deaf and hard of hearing and blind and visually impaired, pursuant to 8 NYCRR section 52.21, in which case the institution shall be deemed approved by the Department, for purposes of offering course work or training within such program to students in the program.

An approved provider shall execute a certification of completion for each person completing course work or training, and within 21 calendar days of completion of the course work or training, the provider shall submit the certification of completion to the person completing the course work or training. The provider shall retain a copy of the certification of completion in the provider's files for not less than 6 years from the date of completion. In the event the provider discontinues offering course work or training, all copies of certifications of completion issued within the 6 years prior to the discontinuance shall be transferred to the Department.

3. COSTS:

The proposed amendment will not impose costs on private regulated parties, unless they choose to become an approved provider of the course work or training in autism and autism spectrum disorders. The cost for application to become an approved provider is \$600. If granted, approval would be for a period of six years. At the expiration of this period, reapplication would include submission of a \$600 fee to the Commissioner. Some approved providers may be able to charge fees to individuals taking the course, thereby recovering their costs. Also, section 57-3.7 of the proposed amendment provides an exemption to an institution that offers a registered program leading to certification in certain classroom teaching titles, pursuant to 8 NYCRR 52.21, in which the institution shall be deemed approved by the Department for purposes of offering such course work or training within such program to students in the program.

For candidates seeking certification as a teacher in special education through individual evaluation pursuant to Section 80-3.7 of the Regulations of the Commissioner of Education, there is no additional cost to the applicant to apply for certification, but the candidate may need to pay a fee to take the two-hour training or course in the needs of students with autism and autism spectrum disorders. This cost is estimated to be \$75.

4. MINIMIZING ADVERSE IMPACT:

Only those school districts, BOCES and other entities that seek status as an approved provider must submit an application fee of \$600 to the State Education Department and meet the requirements of proposed section 57-3.3. Because the costs imposed by this proposed amendment are minimal and may be defrayed by the fees charged to students, the proposed amendment is not expected to have any adverse economic impact on rural areas. It would be contrary to the public welfare to exempt rural areas from the requirements of the proposed amendment, or impose a lesser standard, because such requirements are designed to assure that approved providers offer adequate course work or training in the needs of students with autism and autism spectrum disorders. A uniform standard ensures the quality of certified special education and school administrators working in special education in all parts of the State.

5. RURAL AREA PARTICIPATION:

The Department has requested comments from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State.

**Job Impact Statement**

In order to implement the requirements of Education Law 3004 (4) and (5), as added by Chapter 143 of the Laws of 2006, the purpose of the proposed amendment is to require teachers seeking certification in special education to have course work or training in the needs of students with autism and autism spectrum disorders. The proposed amendment also establishes standards for Education Department approval of providers of course work or training in autism and autism spectrum disorders, to the extent required under section 3004 of the Education Law. In order to comply with the new requirements, it may be necessary for some school districts and boards of cooperative educational services to employ new personnel, which may result in an increase in jobs and employment opportunities.

Because it is evident from the nature of this regulation that it will have only a positive impact or 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.

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## Department of Motor Vehicles

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

**Adjudicatory Proceedings**

**I.D. No.** MTV-15-08-00005-P

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

**Proposed action:** This is a consensus rule making to add section 127.13 to Title 15 NYCRR.

**Statutory authority:** Motor Vehicle Law, sections 215(a), 469-a(1), (2) and 471-a

**Subject:** Adjudicatory proceedings.

**Purpose:** To establish procedures for certain adjudicatory proceedings.

**Text of proposed rule:** Part 127 is amended by adding new section 127.13 to read as follows:

127.13 Adjudicatory proceedings. (a) This section applies to adjudicatory proceedings conducted pursuant to Section 471-a of the Vehicle and Traffic Law.

(b) Request for a hearing. A request for a hearing shall be in writing and made on a form and in a manner prescribed by the commissioner. The request shall contain a short and plain statement of the facts relied upon by the dealer to support a claim that the franchisor has violated one or more specific provisions of Article 17-a of the vehicle and traffic law together with a request for a specific remedy other than damages. The request shall be accompanied by copies of all correspondence between the dealer and the franchisor and other documents relevant to the claims made in the request.

(c) Notice of hearing. The dealer and franchisor shall be given reasonable notice of a hearing. The notice shall include (1) a statement of the time, place and nature of the hearing, (2) the addresses of the dealer and franchisor, (3) the name and address of the presiding officer assigned to the matter, (4) a statement of the legal authority and jurisdiction under which the hearing is to be held, (5) a reference to the particular section of the statutes and rules involved, where possible (6) a short and plain statement of the matters asserted by the dealer, (7) a statement advising the franchisor of the right to submit, within 20 days of receipt of such hearing notice, a short and plain statement of answers to the allegations of the request and of facts on which the franchisor relies in defense of such allegations, (8) a statement advising the dealer of the right to submit, within 20 days of receipt of the franchisor's answering statement an additional statement of facts and documentary material only to the extent of answering new matter raised by the franchisor, (9) a statement that the dealer or franchisor may be represented by counsel, and (10) a statement that interpreter services will be made available upon request of a deaf person, at no charge.

(d) Time and place of hearing. All hearings shall be commenced at the time and place specified in the notice of hearing, or as soon thereafter as practicable, but in no event sooner than 60 days from the date of the notice.

(e) Disclosure. At least 15 days prior to the commencement of a hearing, each party shall disclose to the other party all documents or other materials, including those that may have been maintained in electronic form, that the party intends to introduce at the hearing. Each party shall submit a copy of such disclosure to the presiding officer when disclosure to the other party is made.

(f) Recusal. (a) A party may request recusal of a presiding officer. The request and the reason for it must be made in writing to the assigned presiding officer at the beginning of the hearing or as soon thereafter as the requestor receives information which forms the basis for such request, whichever occurs first. Denial of a request for recusal shall be reviewable by the Administrative Appeals Board under procedures established pursuant to Articles 3-A of the Vehicle and Traffic Law, provided that a final, adverse determination is subsequently made which is appealable by the requestor to the Administrative Appeals Board.

(g) Conduct of hearings; evidence (1) The order of proof at a hearing shall be determined by the presiding officer. Testimony shall be given under oath or affirmation. The presiding officer, in his or her discretion, may exclude witnesses. The presiding officer may admit any relevant evidence in addition to oral testimony. Any witness may be questioned and/or cross-examined by the presiding officer, by the witness's counsel or representative, and by the party who did not call the witness. (2) Rules governing the admissibility of evidence in a court of law are not applicable to hearings held by the department. Evidence which would not be admissible in court, such as hearsay, is admissible in a departmental hearing. The decision of the presiding officer shall be based upon a preponderance of the evidence. (3) The privileges set forth in Article 45 of the Civil Practice Law and Rules shall be applicable to adjudicatory proceedings conducted pursuant to this section.

(h) Adjournments. Adjournments of hearings may only be granted by the presiding officer responsible for the particular hearing, by a supervisor of such presiding officer. It is the department's policy to grant a request for adjournment for good cause if such request is made in writing and received at least 7 days prior to the scheduled hearing and if no prior

requests for adjournment have been made. Notwithstanding this policy, requests for adjournments made more than 7 days prior to hearing may be denied by the presiding officer, or supervisor of the presiding officer, in their discretion. Grounds for such a denial include, but are not limited to, such a request being a second or subsequent request for adjournment, where there is reason to believe such request is merely an attempt to delay the holding of a hearing, or where an adjournment will significantly affect the availability of other witnesses scheduled to testify. Requests for adjournments within 7 days of a scheduled hearing must be made in writing directly to the presiding officer. Such requests will generally not be granted. Such requests may be granted in the discretion of the presiding officer for good cause shown.

(i) Failure to appear; waiver. In any proceeding where no adjournment is requested or, if requested, is not granted, the failure of any party to appear shall be deemed to be a waiver of hearing. Upon any party's failure to appear, the presiding officer may receive testimony of available witnesses and enter evidence into the record.

(j) Resolution without a hearing. Either party may request a resolution of the dispute without a hearing. The request must be made in writing and must be received by the presiding officer at least 15 days prior to the scheduled hearing. The request must be accompanied by sufficient information to permit a determination of whether any unresolved material issue of fact exists and may be accompanied by a legal memorandum. A copy of such request and all supporting documentation must be served upon the other party when the request is submitted to the presiding officer. Proof of service upon the other party shall accompany the request to the presiding officer. The other party shall have the opportunity to respond to such request. Such response must be received by the presiding officer within 15 days of receipt of the request for resolution without a hearing. The response may be accompanied by a legal memorandum. A copy of any response must be served upon the requesting party when the response is submitted to the presiding officer. Proof of service upon the requesting party shall accompany the response to the presiding officer. If necessary, in order to allow the presiding officer to evaluate the request for a resolution without a hearing, the presiding officer may adjourn the scheduled hearing, with notice to all parties of the adjournment.

(k) The presiding officer shall render a decision not later than 90 days after the close of the hearing, or, if appropriate, the granting of a request for resolution without a hearing. The decision of the presiding officer shall be based upon the preponderance of the evidence. The presiding officer shall prepare a decision which shall include findings of fact, a determination on each charge, and, in the event of a determination of a violation, the remedy to be ordered.

**Text of proposed rule and any required statements and analyses may be obtained from:** Christine Legorius, Department of Motor Vehicles, Six Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: heidi.bazicki@dmv.state.ny.us

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

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

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

#### Consensus Rule Making Determination

Chapter 517 of the Laws of 2007, effective February 11, 2008, gives franchised motor vehicle dealers who are or may be aggrieved by violations of the Motor Vehicle Franchised Dealer Act (VTL, Article 17-A) the right to request an adjudicatory proceeding with the Department of Motor Vehicles (DMV) as an alternative to a private action for injunctive relief and damages. This Chapter authorizes and directs that the Department establish the rules and regulations to implement these adjudicatory proceedings as the commissioner shall deem necessary. This proposal sets forth these rules and regulations. This regulation follows, and is consistent with, the statutory requirements of Chapter. The regulation generally tracks language set forth in the statute. In other instances, the proposed procedures are minor in nature and would have no adverse impact on the parties.

This is submitted as a consensus rule because the DMV has consulted with all affected parties and they have no objection to this rule. In addition, the rule merely establishes procedures in order to implement the mandates of the law.

#### Job Impact Statement

A Job Impact Statement is not submitted with this statement because it will not have an adverse impact on job creation or development in New York State.

## Power Authority of the State of New York

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

**Rates for the Sale of Power and Energy**

**I.D. No.** PAS-15-08-00007-P

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

**Proposed action:** Update service tariffs NP-F1, 46 and EP-1, the service tariffs applicable to the Power Authority’s replacement power and expansion power customers.

**Statutory authority:** Public Authorities Law, section 1005(13); and L. 1987, ch. 32

**Subject:** Rates for the sale of power and energy.

**Purpose:** To update replacement power and expansion power service tariffs to streamline them and include additional required information.

**Substance of proposed rule (Full text is not posted on a State website):** Pursuant to the New York Public Authorities Law, Section 1005(13) and Chapter 32 of the Laws of New York of 1987, the Power Authority of the State of New York (the “Authority”) proposes to amend the Authority’s current production service tariffs applicable to Replacement Power and Expansion Power customers.

The Authority proposes to reformat the service tariffs for easier reading, group provisions that relate to each other, incorporate the Annual Adjustment Factor, identify any new provisions that might affect these customer groups and add frequently used abbreviations and terms.

Written comments on the proposed tariffs will be accepted through Tuesday, May 27, 2008, at the address below. For further information, contact: Power Authority of the State of New York, Anne B. Cahill, Corporate Secretary, 123 Main Street, 15M, White Plains, New York 10601, (914) 390-8036, (914) 681-6949 (fax), e-mail: secretarys.office@nypa.gov

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

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

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

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

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

## Public Service Commission

### EMERGENCY RULE MAKING

**Financing of Four Wind Generation Projects by Noble Altona Windpark, LLC et al.**

**I.D. No.** PSC-15-08-00003-EA

**Filing date:** March 24, 2008

**Effective date:** March 24, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving the petition of Noble Altona Windpark, LLC, Noble Wether-

sfield Windpark, LLC, Noble Chateaugay Windpark, LLC and Noble Belmont Windpark, LLC for financing of four wind generation projects.

**Statutory authority:** Public Service Law, section 69

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

**Specific reasons underlying the finding of necessity:** Immediate approval is necessary for the preservation of the general welfare and that compliance with the SAPA section 202(6)(c) notice and comment period would be contrary to the public interest. We take this action on an emergency basis under SAPA section 202(6) for immediate approval of the financing necessary to ensure that the project may close and that the construction and operation of the wind generation projects may be completed within the New York State Energy Research and Development Authority (NYSERDA) and Production Tax Credits (PTC) deadlines. We see no reason to doubt that the financing, as proposed, is structured and contingent on Petitioners being able to take advantage of the PTCs and NYSERDA contracts through the Renewable Energy Attribute Payments Program. Therefore, if this financing is not immediately approved, these projects, which make significant contributions to public policy goals and which are supported by public investment, could be delayed and possibly abandoned. This result would not further the important public policy goal of promoting alternative energy sources.

**Subject:** Financing of four wind generation projects.

**Purpose:** To finance the four wind generation projects.

**Substance of emergency rule:** The Public Service Commission adopted as an emergency/permanent rule, the petition of Noble Altona Windpark, LLC, Noble Wethersfield Windpark, LLC, Noble Chateaugay Windpark, LLC and Noble Belmont Windpark, LLC for financing up to a maximum amount of \$1.475 billion for the construction of four wind generation projects, subject to the terms and conditions set forth in the order.

**The agency adopted** the provisions of this emergency rule as a permanent rule, pursuant to section 202(6)(c) of the State Administrative Procedure Act because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

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

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

Statements and analyses are not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-E-0231SA1)

### NOTICE OF ADOPTION

**Major Rate Filing by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-39-07-00015-A

**Filing date:** March 25, 2008

**Effective date:** March 25, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving Consolidated Edison Company of New York, Inc. (Con Edison) 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, PASNY No. 4 and Economic Development Delivery Service No. 2.

**Statutory authority:** Public Service Law, sections 4, 65 and 66

**Subject:** Major rate filing.

**Purpose:** To allow an increase in annual electric revenues for Con Edison.

**Substance of final rule:** The Public Service Commission adopted an order establishing rates for electric service for Consolidated Edison Company of New York, Inc. (the Company) and approved an increase in annual revenues of \$425 million effective April 1, 2008 and directed the Company to file further revisions to effectuate the change, subject to the terms and conditions of the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS

employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-0523SA1)

**NOTICE OF ADOPTION**

**Distributed Generation Residential by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-41-07-00014-A

**Filing date:** March 19, 2008

**Effective date:** March 19, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

**Subject:** Distributed generation residential—Service Classification No. 16.

**Purpose:** To approve the revision of Central Hudson's residential distributed generation rates.

**Substance of final rule:** The Public Service Commission approved Central Hudson Gas & Electric Corporation's tariff amendment, to update its rates for residential distributed generation customers to reflect the company's new delivery rates, effective April 1, 2008.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(02-M-0515SA19)

**NOTICE OF ADOPTION**

**Energy Services Company Introduction Program by New York State Electric & Gas Corporation**

**I.D. No.** PSC-43-07-00017-A

**Filing date:** March 19, 2008

**Effective date:** March 19, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving New York State Electric & Gas Corporation's (NYSEG) proposal to implement a price-to-compare bill notification as required by the commission's Aug. 29, 2007 order.

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

**Subject:** Implementation of NYSEG's price-to-compare bill notice.

**Purpose:** Adoption of NYSEG's price-to-compare bill notification.

**Substance of final rule:** The Public Service Commission adopted an order approving New York State Electric & Gas Corporation's request to implement a Price-to-Compare bill notification as required by the Commission's August 29, 2007 Order, 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-0479SA3)

**NOTICE OF ADOPTION**

**Gas Meter Access by New York State Electric & Gas Corporation**

**I.D. No.** PSC-50-07-00006-A

**Filing date:** March 24, 2008

**Effective date:** March 24, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving New York State Electric & Gas Corporation's (NYSEG) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 90.

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

**Subject:** Meter access.

**Purpose:** To approve the automation of NYSEG's meter access notification process.

**Substance of final rule:** The Public Service Commission adopted an order approving New York State Electric & Gas Corporation's request to revise its meter access notification process to conform with Rochester Gas and Electric Corporation's tariff provisions, effective April 1, 2008, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-G-1379SA1)

**NOTICE OF ADOPTION**

**Electric Meter Access by New York State Electric & Gas Corporation**

**I.D. No.** PSC-50-07-00007-A

**Filing date:** March 24, 2008

**Effective date:** March 24, 2008

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

**Action taken:** The commission, on March 19, 2008, adopted an order approving New York State Electric & Gas Corporation's (NYSEG) request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 119.

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

**Subject:** Meter access.

**Purpose:** To approve the automation of NYSEG's meter access notification process.

**Substance of final rule:** The Public Service Commission adopted an order approving New York State Electric & Gas Corporation's request to revise its method of notifying customers when it is unable to access a customer's meter and obtain a meter reading after six months, effective April 1, 2008, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-1373SA1)

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

**Liability Provisions for Electric Service by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-15-08-00011-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation (the company) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15—Electricity, to become effective July 1, 2008.

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

**Subject:** Liability provisions.

**Purpose:** To make revisions to clarify the company's limitation of liability provisions.

**Substance of proposed rule:** The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson or the Company) proposal to clarify the Company's limitation of liability provisions. The proposed filing has an effective date of July 1, 2008. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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

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

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

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

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

(08-E-0282SA1)

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

**Liability Provisions for Gas Service by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-15-08-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation (the company) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 12—Gas, to become effective July 1, 2008.

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

**Subject:** Liability provisions.

**Purpose:** To make revisions to clarify the company's limitation of liability provisions.

**Substance of proposed rule:** The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson or the Company) proposal to clarify the Company's limitation of liability provisions. The proposed filing has an effective date of July 1, 2008. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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

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

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

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

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

(08-G-0290SA1)

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

**Water Rates and Charges by Fishers Island Water Works Corp.**

**I.D. No.** PSC-15-08-00013-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Fishers Island Water Works Corp. to finance approximately \$500,000 for capital improvements to its water system.

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

**Subject:** Water rates and charges.

**Purpose:** To finance approximately \$500,000 for capital improvements to its water system.

**Substance of proposed rule:** On February 12, 2008, the Fishers Island Water Works Corp. (Fishers Island or the Company) filed a petition for approval to finance approximately \$500,000 for capital improvements to its water system. These capital improvements include the installation of new furnaces in the pump house, replacing sand filters, and rehabilitation of the Chocount storage tank. Fishers Island requests that it be allowed to establish a two-tiered capital improvement surcharge for its seasonal and year-round customers.

Fishers Island provides water service to 616 metered residential customers, of which 200 are year-round customers and 416 are seasonal customers (June through September), located on Fishers Island, Town of Southold, Suffolk County. The company also provides public fire protection service to the local fire district through 146 hydrants. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(08-W-0178SA1)

## Department of State

### EMERGENCY RULE MAKING

#### Installation of Pool Alarms and Carbon Monoxide Alarms

**I.D. No.** DOS-02-08-00001-E

**Filing No.** 271

**Filing date:** March 19, 2008

**Effective date:** March 19, 2008

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

**Action taken:** Addition of Part 1228 to Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 377 and 378

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

**Specific reasons underlying the finding of necessity:** This rule is adopted as an emergency measure to preserve public safety and because time is of the essence. This rule implements the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, which requires that the New York State Uniform Fire Prevention and Building Code (the Uniform Code) provide that any residential or commercial swimming pool constructed or substantially modified after December 14, 2006 (except hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. The Introducer's Memorandum in Support of the bill that added paragraph (b) of subdivision (14) of section 378 of the Executive Law (chapter 450 of the Laws of 2006) states, in pertinent part, that "drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nation wide, and the third leading cause of injury-related deaths of children in New York. (T)echnological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings." The exception for hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are added by this rule pursuant to new paragraph (c) of Executive Law, section 378, which was added by chapter 75 of the Laws of 2007.

**Subject:** Installation of pool alarms in residential and commercial swimming pools.

**Purpose:** To implement Executive Law, section 378(14)(b)-(c).

**Text of emergency rule:** Title 19 NYCRR is amended by adding a new Part 1228 to read as follows:

*Part 1228. Additional Uniform Code Provisions.*

*Section 1228.1. Additional Uniform Code Provisions.*

*The provisions set forth in this Part 1228 are part of the New York State Fire Prevention and Building Code (the "Uniform Code"). The provisions set forth in this Part 1228 are in addition to, and not in limitation of, the provisions set forth in Parts 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, and 1227 of this Title and in the publications referred to in Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, and 1227 of this Title.*

*1228.2. Swimming pool alarms.*

*(a) Purpose. This section is intended to implement the provisions of Executive Law section 378(14)(b), as added by Chapter 450 of the Laws of 2006, and Executive Law section 378(14)(c), as added by Chapter 75 of the Laws of 2007.*

*(b) Definitions. For the purposes of this section, the following words and terms shall have the following meanings:*

*(1) The word "approved" means approved by the code enforcement official responsible for enforcement and administration of the Uniform Code as complying with and satisfying the purposes of this section.*

*(2) The term "commercial swimming pool" means any swimming pool (as defined in paragraph (4) of this subdivision) that is not a residential swimming pool (as defined in paragraph (3) of this subdivision).*

*(3) The term "residential swimming pool" means a swimming pool (as defined in paragraph (4) of this subdivision) which is situated on the premises of a detached one- or two-family dwelling not more than three stories in height with separate means of egress; a multiple single-family dwelling (townhouse) not more than three stories in height with separate*

*means of egress; a one-family dwelling converted to a bed and breakfast; a community residence for 14 or fewer mentally disabled persons, operated by or subject to licensure by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities; a one- or two-family dwelling operated for the purpose of providing care to more than two but not more than eight hospice patients, created pursuant to Article 40 of the Public Health Law, and defined as a hospice residence in section 4002 of said Law; a manufactured home; a mobile home; or a factory manufactured dwelling unit.*

*(4) The term "swimming pool" means any structure, basin, chamber or tank which is intended for swimming, diving, recreational bathing or wading and which contains, is designed to contain, or is capable of containing water more than 24 inches (610 mm) deep at any point. This includes in-ground, above-ground and on-ground pools; indoor pools; hot tubs; spas; and fixed-in-place wading pools.*

*(5) The term "substantial damage" means damage of any origin sustained by a swimming pool whereby the cost of restoring the swimming pool to its before damaged condition would equal or exceed 50 percent of the market value of the swimming pool before the damage occurred.*

*(6) The term "substantial modification" means any repair reconstruction, rehabilitation, addition, or improvement of a swimming pool, the cost of which equals or exceeds 50 percent of the market value of the swimming pool before the repair, rehabilitation, addition, or improvement is started. If a swimming pool has sustained substantial damage, any repairs are considered to be a substantial modification regardless of the actual repair work performed.*

*(c) Pool alarms. Except as otherwise provided in subdivision (e) of this section, each residential swimming pool installed, constructed or substantially modified after December 14, 2006 and each commercial swimming pool installed, constructed or substantially modified after December 14, 2006 shall be equipped with an approved pool alarm which:*

*(1) is capable of detecting a child entering the water and giving an audible alarm when it detects a child entering the water;*

*(2) is audible poolside and at another location on the premises where the swimming pool is located;*

*(3) is installed, used and maintained in accordance with the manufacturer's instructions;*

*(4) is classified by Underwriters Laboratory, Inc. (or other approved independent testing laboratory) to:*

*(i) reference standard ASTM F2208, entitled "Standard Specification for Pool Alarms," as adopted in 2002 and editorially corrected in June 2005, published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or*

*(ii) reference standard ASTM F2208, entitled "Standard Specification for Pool Alarms," as adopted in 2007, published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428; and*

*(5) is not an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation.*

*(d) Multiple pool alarms. A pool alarm installed pursuant to subdivision (c) of this section must be capable of detecting entry into the water at any point on the surface of the swimming pool. If necessary to provide detection capability at every point on the surface of the swimming pool, more than one pool alarm shall be installed.*

*(e) Exemptions.*

*(1) A hot tub or spa equipped with a safety cover classified by Underwriters Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F1346 (2003), entitled "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs," published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, shall be exempt from the requirements of subdivisions (c) and (d) of this section.*

*(2) Any swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover classified by Underwriters Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F1346 (2003), entitled "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs," published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, shall be exempt from the requirements of subdivisions (c) and (d) of this section.*

*1228.3. Carbon monoxide alarms.*

*Former section 1228.3 was repealed by its own terms on January 1, 2008. The provisions relating to carbon monoxide alarms contained in Parts 1220 to 1227, and in the publications incorporated by reference in Parts 1220 to 1227, are effective on and after January 1, 2008.*

**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. DOS-02-08-00001-EP, Issue of January 9, 2008. The emergency rule will expire June 16, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Joseph Ball, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, e-mail: joseph.ball@dos.state.ny.us

#### **Regulatory Impact Statement**

##### 1. STATUTORY AUTHORITY.

Subdivision 1 of Executive Law section 377 authorizes the State Fire Prevention and Building Code Council to periodically amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code").

Subdivision 1 of Executive Law section 378 directs that the Uniform Code shall address standards for safety and sanitary conditions.

Paragraph (b) of subdivision (14) of Executive Law section 378 directs that the Uniform Code shall provide that residential and commercial swimming pools constructed or substantially modified after December 14, 2006 shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. This rule making adds provisions that require the installation of pool alarms.

Paragraph (c) of subdivision (14) of Executive Law section 378 provides that hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers shall not be required to be equipped with pool alarms. This rule provides for this exception.

##### 2. LEGISLATIVE OBJECTIVES.

The memorandum accompanying the bill which added paragraph (b) to subdivision (14) of Executive Law section 378 included the following justification:

"According to the National Center for Injury and Control (NCIPC), drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nation wide, and the third leading cause of injury-related deaths of children in New York. NCIPC data also shows [sic] that twenty-six infants and children under fourteen drowned in New York State, in 2002 alone. Local laws often require barriers for residential pools, but technological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings."

The Legislative objective sought to be achieved by pool alarm provisions added by this rule is a reduction in the number of accidental drownings in swimming pools in this State.

##### 3. NEEDS AND BENEFITS.

This rule making amends the Uniform Code by adding new provisions that require residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with approved pool alarms. By requiring the use of a device that provides rapid and automatic detection of an unintentional, unsupervised or accidental entry of a child into a pool, this rule should provide the benefit intended by the Legislature: a reduction in the number of accidental drownings. This rule provides that the required pool alarms must be capable of detecting a child entering the water; must be capable of giving an audible alarm; must be audible poolside and at another location on the premises where the swimming pool is located; must be installed, used and maintained in accordance with the manufacturer's instructions; and must be classified by Underwriter's Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F2208, entitled "Standard Specification for Pool Alarms."

A hot tub or spa that is equipped with a safety cover that complies with ASTM F1346 (2003), entitled "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs," published by ASTM International, will not be required to be equipped with a pool alarm. A swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover that complies with ASTM F1346 will not be required to be equipped with a pool alarm. Section 1.1 of ASTM F1346 (2003) provides that "This specification establishes requirements for safety covers for swimming pools, spas, hot tubs, and wading pools (hereinafter referred to as pools, unless otherwise specified). When correctly installed and used in accordance with the manufacturer's instructions, this specification is intended to reduce the risk of drowning by inhibiting the access of children under five years of age to the water." Therefore, these exceptions to the pool alarm requirement,

which reflect the provisions of new paragraph (c) of Executive Law section 378(14), allow, in the stated applications, the use of a cover designed to inhibit access to the water in lieu of an alarm designed to detect actual entry into the water.

##### 4. COSTS.

The initial capital costs of complying with the pool alarm provisions added by this rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pool, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of operating and maintaining the safety cover, which are anticipated to be modest.

While this rule provides that a pool (other than a hot tub or spa) equipped with an automatic power safety cover need not be equipped with a pool alarm, this rule does not require the installation of an automatic power safety cover: the owner of a pool (other than a hot tub or spa) may comply with this rule by installing either a pool alarm or an automatic power safety cover.

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of this rule, except as follows:

First, if the State or any local government constructs, installs or substantially modifies a swimming pool, the State or such local government, as the case may be, will be required to install a pool alarm.

Second, since this rule adds provisions to the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. However, the need to verify the installation of required pool alarms will not have a significant impact on the permitting process or inspection process.

##### 5. PAPERWORK.

This rule will not impose any new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

##### 6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006 will be required to comply with the pool alarm provisions added by this rule.

Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code; since this rule adds provisions to the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

##### 7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

##### 8. ALTERNATIVES.

New paragraph (b) of subdivision (14) of section 378 of the Executive Law requires that the Uniform Code provide that any residential or commercial swimming pool constructed or substantially modified after December 14, 2006 (the effective date of said paragraph) shall be equipped

with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm.

While the use of personal immersion alarms may provide supplemental protection in certain situations, such devices would not protect a child who was not wearing the device when he or she entered the water. Therefore, this rule provides that an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation will not satisfy the requirements of the new provisions.

No other significant alternatives to the pool alarm provisions to be added by this rule were considered, since it appears that no such alternative would satisfy the specific directive of the Legislature as set forth in Executive Law section 378(14)(b)-(c).

#### 9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule.

#### 10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with the pool alarm provisions added by this rule in the normal course of operations, either as part of the installation or construction of a new swimming pool or the substantial modification of an existing swimming pool.

### **Regulatory Flexibility Analysis**

#### 1. EFFECT OF RULE:

The new section 1228.2 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006. The Department of State has not been able to estimate the number of small businesses and local governments that own or operate swimming pools, but it is believed that a majority of the non-residential swimming pools in this State are owned or operated by small businesses or local governments. Small businesses that install construct or modify swimming pools and small businesses that sell swimming pool alarms will also be affected by this rule.

Since this rule adds provisions to the Uniform Fire Prevention and Building Code (the "Uniform Code"), each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimate that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

#### 2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install, use and maintain swimming pool alarms and carbon monoxide alarms in accordance with the rule's provisions. In cases where the installation, construction or substantial modification of a swimming pool involves the issuance of a building permit, the local government responsible for administering and enforcing the Uniform Code will be required to consider the pool alarm requirements of this rule when reviewing plans and inspecting work.

#### 3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

#### 4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200.

Larger pools or irregularly shaped pools may require more than one such alarm. In the case of large, complex shaped pools, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variations in the initial capital cost of complying with the rule or in the annual cost of complying with the rule are likely to be attributable to variations in the size and configuration of the swimming pools to be protected, and not to the type or size of the small businesses and local governments that own the pools. To the extent that larger businesses and larger local governments may tend to own larger swimming pools, or more than one swimming pool, the total costs of compliance would be higher for larger entities and larger local governments.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. Except in the case of very large or complex shaped swimming pools, which may require a more sophisticated alarm system, this rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

#### 6. MINIMIZING ADVERSE IMPACT:

The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing several types of pool alarms on the market to be used. In the case of hot tubs and spas that fall within the Uniform Code's definition of "swimming pool," the rule minimizes any potential adverse impact by providing that a hot tub or spa that is equipped with a safety cover need not be equipped with a pool alarm. Further, the rule provides that other swimming pools equipped with automatic power safety covers need not be equipped with a pool alarm.

The applicable statute (Executive Law section 378(14)(b)-(c)) requires that this rule apply to all swimming pools constructed or substantially modified after December 14, 2006 (except for hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers). The statute does not authorize the establishment of differing compliance requirements or timetables with respect to swimming pools owned or operated by small businesses or local governments. Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are exempt from this rule, as required by Executive Law section 378(14)(c); providing other exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b)-(c) and would endanger public safety.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the adoption of the previous emergency rules that were similar to this rule by means of notices posted on the Department's website and notices published in *Building New York*, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. The Department of State will publish a notice of the emergency adoption of this rule in a future edition of *Building New York*. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

### **Rural Area Flexibility Analysis**

#### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, as added by Chapter 450 of the Laws of 2006 and Chapter 75 of the Laws of 2007, respectively, by adding provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") requiring that a pool alarm be installed in any residential or commercial swimming pool (other than a hot tub or spa equipped with a safety cover or other pool equipped with an automatic power safety cover) that is installed, constructed or substantially modified after December 14, 2006. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

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

The rule will not impose any reporting or recordkeeping requirements. The rule will impose the following compliance requirements:

All residential and all commercial swimming pools that are installed, constructed or substantially modified after December 14, 2006 will be required to be equipped with an acceptable pool alarm that is capable of detecting a child entering the water and of giving an audible alarm, and such alarms will be required to be installed, used and maintained in accordance with the manufacturer's instructions. (Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers will not be required to be equipped with pool alarms.)

No professional services are likely to be needed in a rural area in order to comply with such requirements.

### 3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200.

Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pool, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

A swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover will not be required to be equipped with a pool alarm. However, this rule does not require the installation of an automatic power safety cover.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing a safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variation in initial capital costs of complying and/or annual costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the swimming pools owned or operated by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

### 4. MINIMIZING ADVERSE IMPACT.

Executive Law section 378(14)(b) makes no distinction between swimming pools located in rural areas and swimming pools located in non-rural areas. However, the economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Executive Law section 378(14)(b)-(c) requires that this rule apply to all swimming pools (other than hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) constructed or substantially modified after the effective date of section 378(14)(b), which is December 14, 2006. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b)-(c) and would endanger public safety.

### 5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the adoption of the previous emergency rules that were similar to this rule by means of notices posted on the Department's website and notices published in *Building New York*, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. The Department of State will publish a notice of the emergency adoption of this rule in a future edition of *Building New York*. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

#### **Job Impact Statement**

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

The rule adds a new Part 1228 to Title 19 NYCRR. Part 1228 adds provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") which require that residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with a pool alarm that is capable of detecting a child entering the water and giving an audible alarm. The pool alarms must be installed,

used and maintained in conformance with the manufacturer's instructions. These provisions are added to satisfy the requirements of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law.

Pool alarms that satisfy the requirements of this rule are currently available. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. The cost of providing the appropriate surface wave sensor or subsurface disturbance sensor pool alarm(s) is considered to be modest, particularly when considered in relation to the cost of the typical swimming pool. It is anticipated that requiring pool alarms will have no significant adverse impact on jobs or employment opportunities in businesses that manufacture, install or construct the types of swimming pools that can be protected by such surface wave sensor or subsurface disturbance sensor pool alarm(s). It is also anticipated that requiring pool alarms may have a positive impact on employment opportunities in businesses that sell, install and service pool alarms.

In the case of a large, complex shaped swimming pool, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. At least one manufacturer produces a pool alarm system, using sonar technology, which is claimed to be suitable for pools of virtually any size or shape. The cost of such a system is estimated to be between \$5,000 and \$8,000. A sonar-based pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. In these cases, the cost of providing the appropriate pool alarm system may add between 5% and 10% to the cost of the pool to be protected. This may have some negative impact on the segment of the swimming pool industry that constructs large, complex shaped swimming pools that require the more expensive sonar pool alarm systems. However, based on information provided on the International Aquatic Foundation website ([http://www.iafh2o.org/IAF\\_Statistics.asp](http://www.iafh2o.org/IAF_Statistics.asp)), of the estimated 8,349,000 swimming pools in the United States, only 270,000, or less than 3.25%, are "commercial" swimming pools. Based on this information, it is estimated that less than 3.25% of swimming pools that will be installed, constructed or substantially modified after December 14, 2006 will be "commercial" swimming pools. It is also anticipated that many such "commercial" swimming pools will be of a size and shape that can be protected by the less expensive surface wave sensor or subsurface disturbance sensor pool alarms mentioned above and, accordingly, it is estimated that the percentage of new swimming pools that will require the more expensive sonar pool alarm systems will be much less than 3.25%. Therefore, it is anticipated that this rule will not have a substantial adverse impact on jobs and employment opportunities.

Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are exempted from the pool alarm requirement by this rule.

## NOTICE OF ADOPTION

### **Energy Standards for Buildings except Low-Rise Residential Buildings**

**I.D. No.** DOS-50-07-00004-A

**Filing No.** 277

**Filing date:** March 24, 2008

**Effective date:** April 9, 2008

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

**Action taken:** Amendment of section 1240.1(b) of Title 19 NYCRR.

**Statutory authority:** Energy Law, section 11-103(2)

**Subject:** Energy standards for buildings except low-rise residential buildings.

**Purpose:** To amend the State Energy Conservation Construction Code (the Energy Code) by updating a published standard that is referenced in the Energy Code (*viz.*, ASHRAE 90.1, entitled Energy Standard for Buildings Except Low-Rise Residential Buildings) from the 2001 edition of said standard to the 2004 edition of said standard.

**Text or summary was published** in the notice of proposed rule making, I.D. No. DOS-50-07-00004-P, Issue of December 12, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Raymond Andrews, Department of State, One Com-

merce Plaza, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, e-mail: Raymond.Andrews@dos.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

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## Workers' Compensation Board

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### EMERGENCY RULE MAKING

#### Filing Written Reports of Independent Medical Examinations (IMEs)

**I.D. No.** WCB-15-08-00002-E

**Filing No.** 275

**Filing date:** March 24, 2008

**Effective date:** March 24, 2008

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

**Action taken:** Amendment of section 300.2(d)(11) of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117 and 137

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

**Specific reasons underlying the finding of necessity:** Decisions of board panels have held the current regulation requires reports of independent medical examinations (IMEs) to be received by the board within 10 calendar days of the exam. This is not enough time to timely file preventing proper defense of claim.

**Subject:** Filing written reports of independent medical examinations (IMEs).

**Purpose:** To amend the time for filing written reports of IMEs with the board and furnished to all others.

**Text of emergency rule:** Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 21, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: regulations@wcb.state.ny.us

#### Regulatory Impact Statement

##### 1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's repre-

sentative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

##### 2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

##### 3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

##### 4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

##### 5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all

other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

**Regulatory Flexibility Analysis**

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of inde-

pendent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

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

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

**Job Impact Statement**

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.

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

**Medical Treatment by Physicians, Podiatrists and Psychologists and the Health Insurer Matching Program**

**I.D. No.** WCB-15-08-00006-P

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

**Proposed action:** This is a consensus rule making to amend Parts 325, 326, 329, 330, 331, 333, 340, 341 and 343 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 13(h)(3), 117(1) and 141

**Subject:** Medical treatment by physicians, podiatrists and psychologists and the Health Insurer Matching Program.

**Purpose:** To correct obsolete references, conform to statutory changes and correct addresses, grammar and errors.

**Substance of proposed rule (Full text is posted at the following State website: [www.wcb.state.ny.us](http://www.wcb.state.ny.us)):** The proposed changes modify Parts 325, 326 and 329 of Subchapter C (Medical Treatment and Care), Parts 330, 331 and 333 of Subchapter D (Psychology Treatment and Care), and Parts 340, 341 and 343 of Subchapter E (Podiatry Practice) of Title 12 NYCRR as follows:

Section 325-1.1 modifies "he" to "he or she." This, and the similar "him or her" and "his or hers," continues throughout Subchapter C.

Section 325-1.2 changes "chairman" to "Chair". This continues throughout Subchapters C, D and E.

Section 325-1.3 adds the word "the" before "appearance" in the first sentence. Paragraph (a) removes "Workers' Compensation Board" after "Chair" and adds "provider's" before "authorization certificate number." Paragraph (b) adds "and also with" after "Chair". In Paragraph (d), (1), (3), and (4) are deleted, (2) is renamed (1), (5) is renamed (2), and (6) is renamed (3).

Section 325-1.4 corrects "texts" to "tests" in paragraph (a)(1), removes "Workers' Compensation" before Board and changes "authorizations" to "requests" in paragraph (a)(4), and makes a few grammatical corrections. Substantively, it amends the costs of medical services requiring authorization from \$500 to \$1,000.

Section 325-1.5 adds "or carrier to authorize" after "employer" for the services of a medical specialist, and changes the wording from "within the jurisdiction of the injured worker" to "the choice of the injured worker", except for diagnostic tests or examinations provided by employer or carrier via contract with a provider network or networks, pursuant to section 13-a(7).

Section 325-1.7 changes "second physician" and "said physician" to "superseding physician", and "doctor" to "physician," and makes gender-neutral changes.

Section 325-1.10 is amended to change "chairman" to "Chair."

Subdivisions of (b), (c), (e) and (f) of Section 325-1.11 are amended to make capitalization and gender-neutral changes as above, which continued throughout Subchapters C, D and E.

Section 325-1.17 changes "act" to "Workers' Compensation Law."

Section 325-1.19 is amended to delete "Workers' Compensation" before Board and change "chairman" to "Chair."

Section 325-1.21 is amended to make capitalization and gender-neutral changes.

Subdivisions (a) and (b), paragraph (2) of subdivision (c), and subdivisions (d), (e) and (f) of section 325-1.24 are amended to make capitalization and gender-neutral changes. In addition (c)(2)(i) capitalizes Panel, (c)(2)(ii) adds "subparagraph" before "(i) above", (c)(2)(iii) capitalizes "Law" in "Workers' Compensation law Judge." Subdivision (e) modifies "have finally determined" to "have been finally determined", and (e)(3)(ii) adds "or carrier" to "self-insured employer."

Section 325-2.1 is amended to clarify that this subpart does not apply when carriers contract with a network to perform diagnostic tests, x-ray examinations, magnetic resonance imaging pursuant to Workers' Compensation Law § 13-a(7).

Section 235-2.1, Subdivision (b) of section 325-2.2, and Subdivision (a) of section 325-2.3 are amended to capitalize "Article."

Section 325-2.4 changes "form C-3.1" to "the required consent form."

Section 325-2.5 adds "consent" before "form" and removes the form number "C-3.1."

Section 325-2.6, Section 325-2.10, Section 325-3.8, Section 325-3.10, Section 325-4.1, Subdivisions (b) and (e) of section 325-4.2, the opening paragraph of Section 325-4.3, the opening paragraph of Section 325-4.5, and subdivisions (f) and (g) of section 325-4.6 continue capitalizations and gender neutral changes. Section 325-2.10 is also amended to remove the reference to the managed care pilot program.

Section 325-5.3 removes "a magnetic computer tape" and replaces it with "the required information... in a technological format acceptable to the Board," and changes "tape" to "information."

Subdivision (b) of Section 325-5.5 is amended to change "magnetic tape to be submitted," "tape" and "tape submissions" to "requests for computer searches," and "a magnetic tape using the record format as defined by the workers' compensation board" to "requests for computer searches in a technological format acceptable to the Board."

Subdivision (a) of Section 325-5.6 is amended to change "magnetic tape to be submitted" and "tape" to "requests for computer searches," and "a magnetic tape using the record format as defined by the workers' compensation board" to "requests for computer searches in a technological format acceptable to the Board." In the fourth sentence, "tape" is changed to "request made."

Subdivision (c) of Section 325-5.6 changes "tape" to "request for computer searches" and "magnetic tape" to "requests for computer searches", and "an updated file, on a separate magnetic tape" to "a separate file".

Paragraph (1) of subdivision (d) of Section 325-5.6 changes "Assistant Director of Operations, Room 601, 180 Livingston Street, Brooklyn, NY 11248" to "HIMP Coordinator, State Office Building, 44 Hawley Street, Binghamton, NY 13901."

Subdivision (a) of Section 325-5.7 is amended to change (a) changes "workers' compensation board" to "Board", remove "Workers' Compensation" from before Board, change "tape" to "file", remove "accompany the tape" to "immediately follow submission of the file" and change the address for checks to be made payable from "The New York State Office of General Services" to "The New York State Workers' Compensation Board and sent to the Workers' Compensation Board, Attention: Finance Office, 20 Park Street, Albany, NY 12207."

Paragraph (1) of subdivision (b) of Section 325-6.2 and paragraph (a) of Section 325-6.3 are amended to change "magnetic tape" to "request for computer searches" and remove "for a computer search" from after Board.

Subdivision (a) of Section 325-6.10 changes "the submission of a magnetic tape" and "submission of the tape" to "request for computer matching" and removes "for computer matching purposes" from after Board.

Section 325-8.3, section 325-8.4, subdivision (c) of section 325-8.5, section 325-8.6, section 326-1.1, and section 326-1.2 make only capitalization and gender-neutral changes.

Subdivision (c) of section 326-1.5 makes only capitalization and gender-neutral changes.

Section 326-2.2 changes "180 Livingston Street, Brooklyn, NY 11248" to "100 Broadway – Menands, Albany, NY 12241."

Section 326-2.6 changes "his" to "appellant's."

Section 326-2.10 makes capitalization and gender neutral changes.

Section 329.1 removes the first two sentences regarding the medical fee schedule, and deletes "rendered on a date prior to October 1, 1997" after "occupational therapy."

Section 329.3 changes the reference to the April 1, 2006, update, changes "Medicare Publications" and "Medicode" to "Ingenix, Inc.," and deletes the Medicode address and phone number, adding "Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-369."

Section 329.4 changes "January 1, 1995" to "April 1, 2006."

Subdivision (b) of section 329.5 changes "this Title" to "Title 10 NYCRR," "five hundred" to "one thousand", and "requirements for pre-authorization" to "prior authorization request requirements."

Section 329.6 removes the first sentence and adds "including minor surgery or emergency treatment rendered in a room other than an operating room" after outpatient hospital services, and removes "rendered on a date prior to July 1, 1995."

Section 330.1 changes the Board address from "180 Livingston Street, Brooklyn, NY 11248" to "Health Provider Administration, 100 Broadway-Menands, Albany, NY 12241."

Subdivision (c) of section 330.4 and section 330.7 remove "of the Workers' Compensation Board" after "Chair."

Section 331.2 changes "get" to "obtain."

Subdivision (b) and (c) of section 331.3 make only capitalization and gender-neutral changes.

Section 331.4 removes "as defined in Appendix C-7 of this Title" and "in accordance with the provision of Appendix C-7," and changes "\$500" to "\$1000."

Section 331.5 changes "succeed" to "supercede" and "succeeding" to "superceding."

Section 331.6 and section 331.7 make only capitalization and gender-neutral changes.

Section 331.9 changes "but the succeeding psychologist" to "and the superseding psychologist" and removes "section 331.4 of" before "the Part."

Section 333.1 deletes the first sentence and "rendered on a date prior to October 1, 1997" after "psychological services."

Section 333.2(a) replaces “First Edition, August 1996, amended September 1997” and with “updated April 1, 2006”, removes “Workers’ Compensation” before “Board”, changes “Medicode” to “Ingenix, Inc.” and “which is herein incorporated by reference” to “which is hereby incorporated herein by reference.”

Section 333.2(b) changes “Workers’ Compensation Board in Albany, Binghamton, Brooklyn, Buffalo, Hempstead, Rochester and Syracuse” to “Board”, “Medicode” to “Ingenix, Inc.” and the address from “Medicode, Inc., Dept. CH 10928, Palatine, IL 60055-0928, or by telephone at 1-800-765-6023” to “Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649.”

Section 340.1 changes “180 Livingston Street, Brooklyn, NY 11248” to “Health Provider Administration, 100 Broadway - Menands, Albany, NY 12241.”

Section 340.7, section 341.1, and section 341.2 make only capitalizations and gender-neutral changes.

Section 341.3 changes form “C-48” to “C-4” for attending podiatrists’ 48-hour preliminary reports, and form “C-27P” to “C-27” for podiatry report for reopening of a closed case.

Section 341.4, section 341.6, section 341.7, and section 341.8 make only capitalization and gender-neutral changes.

Section 341.10 changes “succeeding podiatrist” to “superceding podiatrist.”

Section 341.11 makes only gender-neutral changes.

Section 341.12 corrects a spelling error and adds “of the patient’s care” after supervision.

Section 343.1 deletes the first sentence and removes “rendered on a date prior to October 1, 1997” after “podiatry services.”

Section 343.2(a) replaces “First Edition, August 1996, amended September 1997” with “updated April 1, 2006”, removes “Workers’ Compensation”, and changes “Medicode Publications” to “Ingenix, Inc.” and “which is herein incorporated by reference” to “which is hereby incorporated herein by reference.”

Section 343.2(b) changes “Workers’ Compensation Board in Albany, Binghamton, Brooklyn, Buffalo, Hempstead, Rochester and Syracuse” to “Board”, “Medicode” to “Ingenix, Inc.” and its address from “Medicode, Inc., Dept. CH 10928, Palatine, IL 60055-0928, or by telephone at 1-800-765-6023” to “Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649.”

**Text of proposed rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Workers’ Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: regulations@wcb.state.ny.us

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

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

#### **Consensus Rule Making Determination**

The proposed amendments make necessary changes to conform regulatory requirements to changes made to the Workers’ Compensation Law by Chapter 6 of the Laws of 2007, specifically the increase in the threshold amount above which authorization must be requested for special medical services. In addition the proposed amendments change how computer searches are received and processed by the Board to conform with current practice and technological advances; update outdated addresses and contact references; delete references to obsolete forms; update references to the proper version of the fee schedules; make grammatical, punctuation and typographical corrections; correct gender based language and other minor inaccuracies; change a timeframe to match the insurers’ date of coverage against the Board’s date of accident, and indicate that checks for the Health Insurers Matching Program (HIMP) program should be made payable to the Workers’ Compensation Board. Based on the above, it is not likely that anyone will object to the rules as written.

#### **Job Impact Statement**

Most of these amendments are procedural changes which participating parties are already aware of and are in compliance with and will therefore have no adverse impact on jobs. Other amendments correct typographical, grammatical and punctuation errors, update addresses, telephone numbers and Workers’ Compensation Board form numbers; correct gender based language and other minor inaccuracies; and conforms regulatory requirements to statutory language, all of which will have no adverse impact on jobs.

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

### **Workers’ Compensation Claims Processing**

**I.D. No.** WCB-15-08-00008-P

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

**Proposed action:** This is a consensus rule making to amend Parts 300, 303 and 310 of Title 12 NYCRR.

**Statutory authority:** Workers’ Compensation Law, sections 20(2)(j), 25(8), 110(5), 117(1) and 141

**Subject:** Workers’ compensation claims processing, including the administrative adjudication of claims and related subjects.

**Purpose:** To correct obsolete references, conform to statutory changes and correct addresses, grammar and errors.

**Substance of proposed rule (Full text is posted at the following State website: [www.wcb.state.ny.us](http://www.wcb.state.ny.us)):** The changes proposed modify Part 300, 303 and 310 of Subchapter A, “The Industrial Code General Provisions,” of Title 12 NYCRR as follows:

Subdivision (d) of section 300.13 capitalizes the b in Board, and changes “review bureau” to “Board” as the Board no longer has a review bureau.

Subdivision (c) of section 300.15 continues the capitalization, as do all sections modified, and removes a redundant phrase, “to the claimant”.

Subdivisions (b) and (c) of section 300.18 adds capitalizations to General Counsel’s Office, and changes “typewritten” and “photo or typewritten” to “transcribed” copy of minutes.

The opening paragraph and subdivisions (d), (e), (f), (i), (o) and (q) of section 300.19 also capitalizes Judge and Chair, and corrects two spelling errors.

Subdivision (d) of section 300.22 adds a provision to add payments for “prescribed medicine” along with temporary compensation. Form RB-679 is changed to form RFA-2 for use in a reopened case.

Subdivision (e) of section 300.22 continues the above changes.

Subdivision (a) of section 300.23 changes “chairman” to Chair. Form C-8 is changed to form C-8/8.6.

Subdivision (b)(2) of section 300.23 changes “referee” to “Workers’ Compensation Law Judge,” and adds “or she” after he.

Subdivision (e) of section 300.23 continues the above changes.

Subdivision (a) of section 300.27 changes the meeting of the Board from New York City to Albany.

Subdivision (f) of section 300.27 changes the person responsible for reporting “orally or in writing” to the Board on the status of “the adjudication of claims by the Board” from the supervising Workers’ Compensation Law Judge to the attorney “responsible for overseeing adjudication” or “his or her designee.”

Section 300.28 of Title 12 NYCRR is repealed as obsolete.

Section 300.29 changes his/her to read “his or her.”

Paragraph (1) of subdivision (a) of section 303.3 changes vice-chair to Vice Chair.

Paragraph (4) of subdivision (a) of section 303.3 capitalizes all titles.

Section 303.5 continues the above changes.

Subdivisions (a) and (b) of section 303.6 changes when the Chair appoints an arbitrator from “Within 14 days of” to “Within 14 days after” notification.

Subdivision (d) of section 303.7 adds “Workers’ Compensation” before Board.

Subdivisions (b) and (c) of section 303.9 changes “decision by” to “decision of”, removes “Workers’ Compensation” before Board, and changes “respect of” to “relation to.”

Paragraphs (1), (2), and (3) of subdivision (d) of section 303.9 corrects a capitalization at beginning of a sentence, to wit: [for] to For.

Subdivision (g) of section 303.9 capitalizes Appellate Division and Third Department.

Section 310.1 of Title 12 NYCRR is repealed as obsolete, section 310.2 is renumbered section 310.1, and renumbered section 310.1 is amended to change “secretary” to “Secretary of the Board” and adds “Workers’ Compensation Law” before “section.”

**Text of proposed rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Workers’ Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: regulations@wcb.state.ny.us

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

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

**Consensus Rule Making Determination**

The NYS Workers' Compensation Board is proposing to amend sections 300.13(d), 300.15(c), 300.18(b) and (c), 300.19(d), (e), (f), (i), (o), and (q), 300.22(d) and (e), 300.23(a), (b)(2) and (e), 300.27(a) and (f), 300.29, 303.3(a)(1) and (4), 303.5, 303.6(a) and (b), 303.7(d), 303.9(b) and (c), 303.9(d)(1), (2) and (3), 303.9(g), 310.1 and 310.2 of the Title 12 NYCRR to correct references to obsolete forms and/or addresses; to correct typographical, grammatical and punctuation errors; to correct gender based language and minor inaccuracies. One correction conforms regulatory language to statutory language as amended by Chapter 6 of the Laws of 2007. Sections 300.28 and 310.1 of Title 12 NYCRR have been repealed and deleted as obsolete. Former section 310.2 has been renumbered section 310.1 of Title 12 NYCRR. Based on the above, it is not likely that anyone will object to the rules as written.

**Job Impact Statement**

The proposed amendments are technical, clerical and/or ministerial in nature. The changes update and correct addresses, forms and other minor inaccuracies. References to obsolete language, forms and/or procedures are deleted or modified. Some language is corrected to conform regulation to statutory language. The changes will not have an adverse impact on jobs. The proposed repeals will have no adverse impact on jobs.