

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Special Enrollee Positions Designated for Inclusion in the Income Protection Plan (IPP)

I.D. No. CVS-21-08-00001-A

Filing No. 744

Filing date: July 21, 2008

Effective date: Aug. 6, 2008

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

Action taken: Amendment of section 78.9 and repeal of Appendix 5 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 159(1) (listed incorrectly as section 158 in the Notice of Proposed Rule Making)

Subject: Special enrollee positions designated for inclusion in the Income Protection Plan (IPP).

Purpose: To update and regulate the list of special enrollee positions designated for inclusion in the Income Protection Plan.

Text or summary was published in the May 21, 2008 issue of the *State Register*, I.D. No. CVS-21-08-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, AESSOB,

Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

ERRATUM

A Notice of Proposal to repeal 7 NYCRR § 100.21 lacked a sufficient description for the Statement Explaining Consensus Rule Making In Accordance With SAPA, Section 201 (1)(B)(i), when published in the July 23, 2008 issue of the *State Register*. Submitted below is a proper description.

STATEMENT EXPLAINING CONSENSUS RULE MAKING IN ACCORDANCE WITH SAPA, SECTION 201 (1)(B)(i)

The Department of Correctional Services has determined that no person is likely to object to the proposed action because it merely repeals a regulatory provision which is no longer applicable to any person. See SAPA § 102 (11)(a).

7 NYCRR § 100.21 provides that Green Haven Correctional Facility is designated as the institution for execution of a death sentence. The New York State Court of Appeals in *People v. Taylor*, 9 N.Y.3d 129 (2007), determined that the New York State death penalty sentencing statute enacted in 1995 violates the New York State Constitution on its face and that it is not within the power of the judiciary to save statute. Since then, the New York State Legislature has not passed a new death penalty statute. Therefore, the designation of Green Haven as the institution for executions is unnecessary.

The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

NOTICE OF ADOPTION

Family Reunion Program

I.D. No. COR-22-08-00001-A

Filing No. 741

Filing date: July 18, 2008

Effective date: Aug. 6, 2008

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

Action taken: Amendment of Part 220 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 146

Subject: Family Reunion Program.

Purpose: To improve the review process for inmates applying for the Family Reunion Program, better identify programming requirements and define eligibility.

Text or summary was published in the May 28, 2008 issue of the *State Register*, I.D. No. COR-22-08-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Anthony Annucci, Executive Deputy Commissioner, Department of Correctional Services, 1220 Washington Ave., Albany, NY 12226, (518) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Aid Awards for High Need Nursing Programs at Certain Independent Colleges and Universities

I.D. No. EDU-32-08-00003-P

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

Proposed Action: Amendment of section 150.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 215 and 6401-a; L. 2008, ch. 57

Subject: State aid awards for high need nursing programs at certain independent colleges and universities.

Purpose: To permit online nursing programs to be eligible for State aid, in accordance with Chapter 57 of the Laws of 2008.

Text of proposed rule 1. Subparagraph (ii) of paragraph (2) of subdivision (b) of Section 150.4 of the Regulations of the Commissioner of Education is amended, effective November 13, 2008, as follows:

(ii) the institution shall maintain an earned nursing degree program registered by the department, culminating in an associate degree or higher, [excluding] including any online nursing degree program offered via the internet;

2. Subdivision (f) of section 150.4 of the Regulations of the Commissioner of Education is added, effective November 13, 2008, as follows:

(f) *Annual reports. Each eligible institution that receives State aid pursuant to section 6401-a of the Education Law shall submit an annual report to the commissioner by June 1 of each year, detailing each expenditure of State aid received and any other information the commissioner may require, in a form prescribed by the commissioner.*

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Education Department, Office of Counsel, 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 law and policies of the State relating to education.

Section 215 of the Education Law authorizes the Commissioner of Education, or their representative, to visit, examine into and inspect, any institution in the university and any school or institution under the educational supervision of the state, and may require, as often as desired, reports in such form as the Regents or the Commissioner of Education may require.

Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state

aid for high needs nursing programs at certain independent colleges and universities and to promulgate any regulations necessary to implement the requirements of this section.

Chapter 57 of the Laws of 2008 authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives set forth in the aforementioned statutes in that it permits eligible institutions offering online nursing degree programs to receive state aid under section 6401-a of the Education Law and requires each institution that receives state aid under Section 6401-a of the Education Law to submit an annual report detailing each expenditure of state aid.

3. NEEDS AND BENEFITS:

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State, including those offering online nursing programs via the internet. In order to conform our existing regulation to the Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, the proposed amendment authorizes eligible institutions offering online nursing degree programs to receive state aid under section 6401-a of the Education Law and requires each institution that receives state aid under Section 6401-a of the Education Law to submit an annual report detailing each expenditure of state aid.

Other than the annual report mentioned above, the amendment does not add or alter any other reporting or recordkeeping requirements for independent colleges and universities, including those located in rural areas. The amendment will not require regulated parties to acquire professional services to comply.

4. COSTS:

a. Costs to the State government. The proposed amendment will not impose additional costs on State government.

b. Costs to local government. None.

c. Costs to private regulatory parties. The proposed amendment may impose negligible costs on regulated entities when applying for state aid awards under Section 6401-a of the Education Law. Specifically, an annual negligible cost may be imposed on regulated parties to complete the required annual report.

d. Costs to the regulatory agency. None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any new mandates on local governments.

6. PAPERWORK:

Other than the annual report mentioned above, the amendment does not add or alter any other reporting or recordkeeping requirements for independent colleges and universities. The amendment will not require regulated parties to acquire professional services.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment at this time.

9. FEDERAL STANDARDS:

The proposed amendment provides State aid for certain independent institutions of higher learning that offer online high needs nursing programs.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed regulation by its stated effective date.

Regulatory Flexibility Analysis

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet. In order to implement the requirements of section 6401-a, the proposed amendment is needed to delete the exclusion currently in the regulation for online nursing programs. The proposed amendment also requires each institution to submit an annual report detailing each expenditure of state aid received under Section 6401-a of the Education Law.

Based on 2005-2006 academic year data, the Department estimates that approximately 43 colleges and universities will be eligible for state aid for

high needs nursing programs under Section 6401-a of the Education Law. However, in order to be eligible for state aid under this section, the institution must be a non-profit or independent college or university. Accordingly, the institutions applying for state aid under this section are not small businesses.

Because it is evident from the nature of the proposed amendment 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 certain independent colleges and universities that offer nursing programs in New York State with high needs nursing programs registered by the State Education Department. Based on 2005-2006 academic year data, the Department estimates that approximately 43 colleges and universities will be eligible for state aid under the proposed regulation. Of these, approximately 12 are located in rural areas, defined as 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.

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

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet. In order to implement the requirements of section 6401-a, the proposed amendment is needed to delete the exclusion currently in the regulation for online nursing programs. The proposed amendment also requires each institution to submit an annual report detailing each expenditure of state aid received under Section 6401-a of the Education Law.

3. COSTS:

The proposed amendment may impose negligible costs on regulated entities when applying for state aid awards under Section 6401-a of the Education Law. Specifically, an annual negligible cost may be imposed on regulated parties to complete the required annual report.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements the requirements of Chapter 57 of the Laws of 2008. The statute makes no exception and does not impose different requirements for eligible independent colleges and universities located in rural areas. The proposed amendment has been carefully drafted to implement the statutory mandates.

5. RURAL AREA PARTICIPATION:

A copy of the proposed amendment was shared with each of the independent colleges and universities in New York State with high needs nursing programs, including those located in rural areas.

In addition, comments on the proposed amendment were solicited from the Rural Education Advisory Committee, whose membership includes, among others, representatives of school districts, BOCES, business interests, and government entities located in rural areas.

Job Impact Statement

Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet. In order to implement the requirements of section 6401-a, the proposed amendment is needed to delete the exclusion currently in the regulation for online nursing programs. The proposed amendment also requires each institution to submit an annual report detailing each expenditure of state aid received under Section 6401-a of the Education Law.

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Education Law Section 310 Appeals to the Commissioner of Education

I.D. No. EDU-32-08-00004-P

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

Proposed Action: Amendment of section 100.2 (y) and Parts 275 and 276 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 310 (not subdivided) and 311 (not subdivided)

Subject: Education Law section 310 appeals to the Commissioner of Education.

Purpose: To clarify, update and prescribe Education Law section 310 appeal procedures and requirements.

Summary of proposed rule (Full text is posted at the following State website <http://www.counsel.nysed.gov/home1.html>): The State Education Department proposes to amend Parts 275 and 276 and section 100.2(y) of the Regulations of the Commissioner of Education, regarding the procedures for bringing appeals to the Commissioner of Education pursuant to Education Law section 310. The following is a summary of the provisions of the proposed rule.

Section 275.3 is revised to clarify procedures for the submission of additional pleadings.

Sections 275.5 and 275.6 are revised to clarify requirements for verification of pleadings by a corporation, limited liability company (LLC), limited liability partnership (LLP) or other business entity.

Sections 275.8 and 275.9 have been revised to clarify procedures for the service of a petition when the last day for service falls on a Saturday, Sunday or legal holiday, to clarify procedures for completion of service by private express delivery, and to provide a form for affidavit of service by private express delivery.

Section 275.11 has been revised to add cross citations to section 276.1 if a stay is being requested, and to section 277.1 if removal of a school officer is sought.

Section 275.12 has been revised to require in appeals involving student discipline, that the school district include with its answer the record of the disciplinary hearing prepared in accordance with Education Law section 3214, which shall include the transcript of the hearing, in either stenographic or tape recorded form, and any documents admitted into evidence.

Section 275.13 has been revised to clarify that the commissioner, in his/her sole discretion, may excuse a failure to serve and answer within the time prescribed for good cause shown and that the reasons for such failure shall be set forth in the answer.

Section 275.15 has been revised to clarify requirements for representation by an attorney of an individual party, a school district, and a corporation, LLC, LLP or other business entity.

Section 275.16 has been revised to clarify that the Commissioner may, in his/her discretion, and at any stage of the proceedings, dismiss an untimely appeal.

Section 275.18 has been added to specify requirements and procedures for the consolidation of appeals.

Section 276.1 has been revised to clarify service requirements for affidavits in opposition to an application for a stay order.

Section 276.2 has been revised to provide that the Office of Counsel will notify parties with respect to a request for oral arguments, only in the event the request is granted.

Section 276.3 has been revised to clarify requirements and procedures for seeking extensions of time to answer or reply.

Section 276.4 has been revised to clarify procedures for submission of memoranda of law.

Section 276.5 has been revised to clarify procedures for submission of additional affidavits, exhibits and other supporting papers.

Section 276.9 has been revised to clarify procedures for the dismissal of appeals.

Provisions throughout the regulations are revised to update or correct terminology, e-mail and regular mail addresses and telephone numbers, and obsolete, superceded provisions in 275.9, 275.11, 275.13, 275.14 and 276.4, relating to pleadings in appeals concerning pupils with handicapping conditions, have been deleted.

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

Data, views or arguments may be submitted to: Kathy A. Ahearn, Counsel and Deputy Commissioner for Legal Affairs, Office of Counsel, Education Bldg., Rm. 148, Education Department, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, e-mail: legal@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

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

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 310 provides that an aggrieved party may appeal by petition to the Commissioner of Education in consequence of certain specified actions by school districts and school officials.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals to the Commissioner brought pursuant to Education Law section 310.

Education Law section 3202(1) specifies the school district of residence as the school district in which children residing in New York State are entitled to attend school without the payment of tuition. That section is intended to assure that each child residing within the State is able to attend school on a tuition-free basis in accordance with Article XI, section 1 of the New York State Constitution. Moreover, it is the policy of the Legislature, as expressed in Education Law section 3205(1) to require instruction for each child of compulsory school age within the State.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes to regulate the practice and procedures to be followed in Education Law section appeals.

3. NEEDS AND BENEFITS:

The proposed rule is needed to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice. Specifically, the proposed rule will:

- (1) clarify procedures for the submission of additional pleadings;
- (2) clarify requirements for verification of pleadings by a corporation, limited liability company (LLC), limited liability partnership (LLP) or other business entity;
- (3) clarify procedures for the service of a petition when the last day for service falls on a Saturday, Sunday or legal holiday and procedures for completion of service by private express delivery, and to provide a form for affidavit of service by private express delivery;
- (4) add cross citations to section 276.1 if a stay is being requested, and to section 277.1 if removal of a school officer is sought;
- (5) require in appeals involving student discipline, that the school district include with its answer the record of the disciplinary hearing prepared in accordance with Education Law section 3214;
- (6) clarify that the commissioner, in his/her sole discretion, may excuse a failure to serve an answer within the time prescribed for good cause shown and that the reasons for such failure shall be set forth in the answer;
- (7) clarify requirements for representation by an attorney of an individual party, a school district, and a corporation, LLC, LLP or other business entity;
- (8) clarify that the Commissioner may, in his/her discretion, and at any stage of the proceedings, dismiss an untimely appeal;
- (9) specify requirements and procedures for the consolidation of appeals;
- (10) clarify service requirements for affidavits in opposition to an application for a stay order;
- (11) provide that the Office of Counsel will notify parties with respect to a request for oral arguments, only in the event the request is granted;
- (12) clarify requirements and procedures for seeking extensions of time to answer or reply;
- (13) clarify procedures for submission of memoranda of law;
- (14) clarify procedures for submission of additional affidavits, exhibits and other supporting papers;
- (15) clarify procedures for the dismissal of appeals; and

(16) update or correct terminology, e-mail and regular mail addresses and telephone numbers, and delete obsolete, superseded provisions in 275.9, 275.11, 275.13, 275.14 and 276.4, relating to pleadings in appeals concerning pupils with handicapping conditions.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed rule clarifies, updates and prescribes Education Law section 310 appeal procedures and requirements, consistent with established practice, and will not impose any additional costs on the State, local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice. The proposed amendment will not impose any additional program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment is necessary to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice.

A party seeking to file an additional pleading shall submit an application to the Office of Counsel which shall state the reasons why such pleading is necessary and include a copy of the proposed pleading, together with proof of service upon all parties.

A party seeking to file affidavits, exhibits and other supporting papers shall submit an application to the Office of Counsel, which shall state the reasons why such affidavits, exhibits or other supporting papers are necessary and include a copy of the affidavit, exhibit or other supporting papers, together with proof of service upon all parties.

In appeals involving student discipline, it shall be the responsibility of the board of education, board of trustees or sole trustee to include with its answer the record of the disciplinary hearing.

A party involved in a consolidation of appeals shall serve and file pleadings, affidavits, memoranda of law and other papers upon such terms as the Commissioner may specify.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and Federal rules or requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to procedures for appeals that are brought pursuant to Education Law section 310, and does not apply to small businesses since they are not parties to such proceedings. The proposed amendment will not impose any additional reporting, recordkeeping or other compliance requirements on small businesses, nor will it have any adverse economic impact on small businesses. Because it is evident from the nature of the rule that it does not apply to small businesses, no further steps were needed to ascertain that fact and none were taken. Therefore, a regulatory flexibility analysis is not required, and one has not been prepared.

Local Governments:

EFFECT OF PROPOSED RULE :

The proposed amendment is applicable to all public school districts and boards of cooperative educational services (BOCES) in the State.

COMPLIANCE REQUIREMENTS:

The proposed rule is needed to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice, and will not impose any additional compliance requirements. Specifically, the proposed rule will:

- (1) clarify procedures for the submission of additional pleadings;
- (2) clarify requirements for verification of pleadings by a corporation, limited liability company (LLC), limited liability partnership (LLP) or other business entity;

(3) clarify procedures for the service of a petition when the last day for service falls on a Saturday, Sunday or legal holiday and procedures for completion of service by private express delivery, and to provide a form for affidavit of service by private express delivery;

(4) add cross citations to section 276.1 if a stay is being requested, and to section 277.1 if removal of a school officer is sought;

(5) require in appeals involving student discipline, that the school district include with its answer the record of the disciplinary hearing prepared in accordance with Education Law section 3214;

(6) clarify that the commissioner, in his/her sole discretion, may excuse a failure to serve an answer within the time prescribed for good cause shown and that the reasons for such failure shall be set forth in the answer;

(7) clarify requirements for representation by an attorney of an individual party, a school district, and a corporation, LLC, LLP or other business entity;

(8) clarify that the Commissioner may, in his/her discretion, and at any stage of the proceedings, dismiss an untimely appeal;

(9) specify requirements and procedures for the consolidation of appeals;

(10) clarify service requirements for affidavits in opposition to an application for a stay order;

(11) provide that the Office of Counsel will notify parties with respect to a request for oral arguments, only in the event the request is granted;

(12) clarify requirements and procedures for seeking extensions of time to answer or reply;

(13) clarify procedures for submission of memoranda of law;

(14) clarify procedures for submission of additional affidavits, exhibits and other supporting papers;

(15) clarify procedures for the dismissal of appeals; and

(16) update or correct terminology, e-mail and regular mail addresses and telephone numbers, and delete obsolete, superceded provisions in 275.9, 275.11, 275.13, 275.14 and 276.4, relating to pleadings in appeals concerning pupils with handicapping conditions.

A party seeking to file an additional pleading shall submit an application to the Office of Counsel which shall state the reasons why such pleading is necessary and include a copy of the proposed pleading, together with proof of service upon all parties.

A party seeking to file affidavits, exhibits and other supporting papers shall submit an application to the Office of Counsel, which shall state the reasons why such affidavits, exhibits or other supporting papers are necessary and include a copy of the affidavit, exhibit or other supporting papers, together with proof of service upon all parties.

In appeals involving student discipline, it shall be the responsibility of the board of education, board of trustees or sole trustee to include with its answer the record of the disciplinary hearing.

A party involved in a consolidation of appeals shall serve and file pleadings, affidavits, memoranda of law and other papers upon such terms as the Commissioner may specify.

PROFESSIONAL SERVICES:

The proposed amendment will not increase the level of professional services needed by school districts or BOCES to comply with its requirements.

COMPLIANCE COSTS:

The proposed rule is needed to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice, and will not impose any additional costs on school districts or BOCES.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed under the compliance costs section above.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice, and will not impose any additional compliance requirements on school districts and BOCES.

The proposed amendment modifies the procedures concerning appeals that are brought pursuant to Education Law section 310. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on local governments beyond those imposed by Federal and State statutes.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts and BOCES through the offices of the district superintendents of each supervisory district in the State. A draft of the proposed rule was sent,

for review and comment, to the New York School Boards Association, New York State United Teachers, New York City Department of Education, New York State Council of School Superintendents, New York State Association of School Attorneys and the Department's Office of State Review.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At present 2 school districts and 11 BOCES serve rural areas.

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

The proposed rule is needed to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice, and will not impose any additional compliance requirements. Specifically, the proposed rule will:

(1) clarify procedures for the submission of additional pleadings;

(2) clarify requirements for verification of pleadings by a corporation, limited liability company (LLC), limited liability partnership (LLP) or other business entity;

(3) clarify procedures for the service of a petition when the last day for service falls on a Saturday, Sunday or legal holiday and procedures for completion of service by private express delivery, and to provide a form for affidavit of service by private express delivery;

(4) add cross citations to section 276.1 if a stay is being requested, and to section 277.1 if removal of a school officer is sought;

(5) require in appeals involving student discipline, that the school district include with its answer the record of the disciplinary hearing prepared in accordance with Education Law section 3214;

(6) clarify that the commissioner, in his/her sole discretion, may excuse a failure to serve an answer within the time prescribed for good cause shown and that the reasons for such failure shall be set forth in the answer;

(7) clarify requirements for representation by an attorney of an individual party, a school district, and a corporation, LLC, LLP or other business entity;

(8) clarify that the Commissioner may, in his/her discretion, and at any stage of the proceedings, dismiss an untimely appeal;

(9) specify requirements and procedures for the consolidation of appeals;

(10) clarify service requirements for affidavits in opposition to an application for a stay order;

(11) provide that the Office of Counsel will notify parties with respect to a request for oral arguments, only in the event the request is granted;

(12) clarify requirements and procedures for seeking extensions of time to answer or reply;

(13) clarify procedures for submission of memoranda of law;

(14) clarify procedures for submission of additional affidavits, exhibits and other supporting papers;

(15) clarify procedures for the dismissal of appeals; and

(16) update or correct terminology, e-mail and regular mail addresses and telephone numbers, and delete obsolete, superceded provisions in 275.9, 275.11, 275.13, 275.14 and 276.4, relating to pleadings in appeals concerning pupils with handicapping conditions.

A party seeking to file an additional pleading shall submit an application to the Office of Counsel which shall state the reasons why such pleading is necessary and include a copy of the proposed pleading, together with proof of service upon all parties.

A party seeking to file affidavits, exhibits and other supporting papers shall submit an application to the Office of Counsel, which shall state the reasons why such affidavits, exhibits or other supporting papers are necessary and include a copy of the affidavit, exhibit or other supporting papers, together with proof of service upon all parties.

In appeals involving student discipline, it shall be the responsibility of the board of education, board of trustees or sole trustee to include with its answer the record of the disciplinary hearing.

A party involved in a consolidation of appeals shall serve and file pleadings, affidavits, memoranda of law and other papers upon such terms as the Commissioner may specify.

The proposed amendment will not increase the level of professional services needed by school districts or BOCES to comply with its requirements.

COMPLIANCE COSTS:

The proposed rule is needed to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice, and will not impose any additional costs on school districts or BOCES.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify, update and prescribe Education Law section 310 appeal procedures and requirements, consistent with established practice, and will not impose any additional compliance requirements on school districts and BOCES.

The proposed amendment modifies the procedures concerning appeals that are brought pursuant to Education Law section 310. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on local governments beyond those imposed by Federal and State statutes.

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on rural areas. Because these requirements are applicable State-wide, it was not possible to prescribe lesser requirements for rural areas.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts and BOCES located in rural areas. A draft of the proposed rule was sent, for review and comment, to the New York School Boards Association, New York State United Teachers, New York City Department of Education, New York State Council of School Superintendents, New York State Association of School Attorneys and the Department's Office of State Review.

Job Impact Statement

The proposed amendment relates to Education Law section 310 appeal procedures and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

ERRATUM

A Notice of Emergency/Proposed Rule Making, I.D. No. ENV-29-08-00005-EP, pertaining to Lobster Maximum Size Limit for Lobster Conservation Management Area 4 and V- Notch Definition for Lobster Harvest, published in the July 16, 2008 issue of the *State Register* contained an incorrect Additional Matter. The correct Additional Matter follows:

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Division of Housing and Community Renewal

NOTICE OF ADOPTION

Entities Which Own and Control Housing Companies under the Private Housing Finance Law

I.D. No. HCR-08-08-00006-A

Filing No. 747

Filing date: July 22, 2008

Effective date: Aug. 6, 2008

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

Action taken: Addition of Part 1733 to Title 9 NYCRR.

Statutory authority: Private Housing Finance Law, sections 13, 16, 17, 27, 32, 72, 73, 82 and 84

Subject: Entities which own and control housing companies under the Private Housing Finance Law.

Purpose: To regulate the approval of a partner, the transfer of interest in a housing company, and the conduct of the partner.

Text of final rule: The Management Manual for Housing Companies, as amended and adopted pursuant to the powers granted to the Division of Housing and Community Renewal by the Private Housing Finance Law, Section 32 (as derived from section 319 of the Public Housing Law, as amended; repealed by chapter 803, Laws of 1961) as amended and Section 84 (as derived from section 181 of the Public Housing Law, as amended; repealed by chapter 803, Laws of 1961) as amended, is further amended to add a new part 1733 as provided below:

PART 1733

PARTNERSHIP RELATIONS AND TRANSFERS OF INTERESTS IN RENTAL HOUSING COMPANIES.

Section 1733: Rights and Duties of Partnerships and Housing Companies.

(a) *Partnership Agreements.* Partnership agreements and amendments thereto must be in compliance with the Private Housing Finance Law and regulations, and are subject to the prior, written approval of the commissioner.

(b) *Financial Records and Partnership Distributions.* A partnership shall furnish to the commissioner such financial and other reports as the commissioner deems necessary. All distributions by a partnership are subject to the prior, written approval of the commissioner.

(c) *Partnership/Housing Company Transactions.* A housing company which is in a partnership, or a partnership acting on behalf of a housing company, may not enter into contracts with persons or entities in which the general partner or any person or entity who is actively involved in the ownership or management of the property has a direct or indirect interest, or which are controlled by such general partner or other person or entity, without the prior, written approval of the commissioner.

(d) *Transfers of Interests in Partnerships.* Transfers of general partner or controlling interests in the partnership, including but not limited to the substitution or admission of a new general partner, are subject to the prior, written approval of the commissioner.

(e) *Transfers of Interests in Housing Companies.* An interest in a housing company may not be sold or otherwise transferred without the prior, written approval of the commissioner.

(f) *Standard of Review.* In reviewing requests for approval of changes in ownership interests under this section, in addition to determining compliance with all other requirements for such sales or transfers, the commissioner shall determine that the proposed purchaser or transferee is a qualified and responsible owner, which shall mean that the proposed purchaser or transferee has the capacity to maintain such property in good physical and financial condition, and in compliance with program requirements. In making such determination, the commissioner may consider the purchaser or transferee's past performance with regard to the following factors:

- (1) successful experience in owning or managing comparable residential properties;
- (2) mortgage defaults;
- (3) suspensions, debarments, terminations or substandard performance under a government program;
- (4) loss of any licenses or permits;
- (5) criminal convictions;
- (6) civil injunctions or other court sanctions, including any judgments;
- (7) defaults on loans or surety or performance bonds;
- (8) building maintenance and code violations on other buildings;
- (9) bankruptcies; and
- (10) other factors which bear on the capacity of the purchaser or transferee to maintain the project in good physical and financial condition and otherwise comply with program requirements.

(g) *Conditions on Approval.* In the event that the dissolution or reconstitution of a housing company is limited or precluded by statute, local law, ordinance, land disposition agreement, deed restriction, or by any other terms of creation, conveyance or through its organizational documents, the Commissioner may condition approval of a request to sell or transfer a housing development owned by such housing company, or any other interest set forth in this Part, upon the continuation of such limitation or preclusion against the buyer or transferee.

(h) *Failure to Provide Information or Documentation.* Failure to provide information or documentation which the commissioner deems necessary to determine a request for approval under this section may be the basis for rejecting any application filed hereunder.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 1733(c).

Text of rule and any required statements and analyses may be obtained from: Gary R. Connor, Esq., Division of Housing and Community Renewal, 25 Beaver St., 7th Fl., New York, NY 10004, (212) 480-6707, e-mail: gconnor@nysdchr.gov

Regulatory Impact Statement

DHCR has promulgated 9 NYCRR 1733 because although administration of the Private Housing Finance Law required DHCR to approve transfers of ownership interests in these companies, there were no regulations governing the approval process. These regulations codify DHCR's role and standards in the process of approving the transfer of the housing company or partnership so as to allow DHCR to assure that responsible individuals and entities will be in control of the housing company and that obligations placed on housing companies are not circumvented or impinged upon by the use of such partnerships.

To accomplish this end, section 1733(c) required that a housing company which is in a partnership, or a partnership acting on behalf of a housing company receive the prior written approval of the Commissioner before entering into contracts with persons or entities in which other partners have a direct or indirect interest, or which are controlled by other partners. As a result of public comment, DHCR revised section 1733(c) to exclude limited partners who do not actively participate in the operation or management of the property from the requirement that such contracts receive the prior approval of the Commissioner.

Although the text of the regulation has been modified in this regard, such modification is not a substantial revision and does not necessitate a change in any of the statements made in the originally-published Regulatory Impact Statement.

Regulatory Flexibility Analysis

DHCR has promulgated 9 NYCRR 1733 because although administration of the Private Housing Finance Law required DHCR to approve transfers of ownership interests in these companies, there were no regulations governing the approval process. These regulations codify DHCR's role and standards in the process of approving the transfer of the housing company or partnership so as to allow DHCR to assure that responsible individuals and entities will be in control of the housing company and that obligations placed on housing companies are not circumvented or impinged upon by the use of such partnerships.

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Although the text of the regulation has been modified in this regard, such modification is not a substantial revision and does not necessitate a change in any of the statements made in the originally-published Regulatory Flexibility Analysis.

Rural Area Flexibility Analysis

DHCR has promulgated 9 NYCRR 1733 because although administration of the Private Housing Finance Law required DHCR to approve transfers of ownership interests in these companies, there were no regulations governing the approval process. These regulations codify DHCR's role and standards in the process of approving the transfer of the housing company or partnership so as to allow DHCR to assure that responsible individuals and entities will be in control of the housing company and that obligations placed on housing companies are not circumvented or impinged upon by the use of such partnerships.

To accomplish this end, section 1733(c) required that a housing company which is in a partnership, or a partnership acting on behalf of a housing company receive the prior written approval of the Commissioner before entering into contracts with persons or entities in which other partners have a direct or indirect interest, or which are controlled by other partners. As a result of public comment, DHCR revised section 1733(c) to exclude limited partners who do not actively participate in the operation or management of the property from the requirement that such contracts receive the prior approval of the Commissioner.

Although the text of the regulation has been modified in this regard, such modification is not a substantial revision and does not necessitate a change in any of the statements made in the originally-published Rural Area Flexibility Analysis.

Job Impact Statement

DHCR has promulgated 9 NYCRR 1733 because although administration of the Private Housing Finance Law required DHCR to approve transfers of ownership interests in these companies, there were no regulations governing the approval process. These regulations codify DHCR's role and standards in the process of approving the transfer of the housing company or partnership so as to allow DHCR to assure that responsible individuals and entities will be in control of the housing company and that obligations placed on housing companies are not circumvented or impinged upon by the use of such partnerships.

To accomplish this end, section 1733(c) required that a housing company which is in a partnership, or a partnership acting on behalf of a housing company receive the prior written approval of the Commissioner before entering into contracts with persons or entities in which other partners have a direct or indirect interest, or which are controlled by other partners. As a result of public comment, DHCR revised section 1733(c) to exclude limited partners who do not actively participate in the operation or management of the property from the requirement that such contracts receive the prior approval of the Commissioner.

Although the text of the regulation has been modified in this regard, such modification is not a substantial revision and does not necessitate a change in the originally-published Job Impact Statement Exemption.

Assessment of Public Comment

This assessment specifies the major substantive issues raised in the two letters received concerning the new regulations governing Partnership Relations and Transfers of Interests in Rental Housing Companies. The assessment includes the alternatives suggested and DHCR's COMMENTARY in response thereto.

The Regulations were published in the New York State Register on February 20, 2008, and the period for the submission of public comments on these amendments ended on April 5, 2008.

Comment: Under Section 1733 (d) transfers of interests from limited partners to general partners or controlling interests or to new partners should also require approval by the Commissioner.

Response: The proposed regulations do require prior approval of a transfer of a controlling interest to a new partner. However they do not require prior approval of a transfer of a limited partner's interest to an existing general partner because the interest of the limited is generally that of a passive investor, and the general partner is already in control of the operation and management of the property, so the transfer is not likely to affect management or operations. Accordingly, after considering the alternative, DHCR has determined that to require prior approval of such transfers in every instance would be unnecessary and could create an undue regulatory burden, especially where, as is often the case in modern real estate ownership structures, there are a large number of limited partners.

Comment: All written and financial documentation in connection with the proposed change should be submitted to the Commissioner.

Response: In considering this comment, DHCR concluded that since modern real estate transactions are often multifaceted, and may involve voluminous documents, only some of which are relevant to DHCR's supervisory responsibilities, DHCR believes it is only necessary to require the submission of documentation which is relevant or necessary to satisfy DHCR's inquiries. However, there is nothing in these regulations which preclude DHCR from making all inquires and requesting all documentation which DHCR deems necessary to fulfill its statutory functions in the particular circumstances presented.

Comment: Section 1733(f) should explicitly state that DHCR must determine that the proposed sale price is compatible under the existing rent structure. Sales that are not supportable under Mitchell-Lama should be rejected.

Response: This comment is a request for an additional provision rather than a comment on an existing provision of the proposed regulations. Accordingly, it would be inappropriate for DHCR to respond to this comment in the context of these proceedings or to modify these proposed regulations in response to the comment.

Comment: Under Section 1733(g), under what circumstances would conditions affecting dissolution NOT survive purchase? DHCR should reject any application for dissolution given these restrictions.

Response: The circumstances and conditions that might affect a dissolution or reconstitution are many and varied, as are their possible effects upon a housing company's ability to dissolve or reconstitute. In consider-

ing this comment, DHCR has determined that it would not be appropriate to provide an exclusive list of such circumstances in a regulation, nor would it be appropriate for a regulation to dictate the final outcome of this type of review. DHCR, however, will review these matters on a case-by-case basis as appropriate.

Comment: Sections 1733(g) and (h) should affirmatively read that DHCR “shall” act (as opposed to “may” act) to reject sales that do not meet the regulation’s requirements.

Response: In reviewing requests for approval of a transfer of interests, DHCR believes that it should maintain discretion as to questions of whether the requirements of the regulations have been met.

Comment: Article II of the Private Housing Finance Law (“PHFL”) does not give the Commissioner the power to implement these proposed regulations.

Response: After considering this comment, DHCR believes that its Regulatory Impact Statement adequately sets forth those provisions of the PHFL which give the Commissioner the power to implement these regulations.

Comment: The Regulation’s standards are vague and overly broad and impose duties upon and authorize DHCR to assume responsibility beyond what its staff may accomplish in a timely and business-like manner.

Response: Under various statutes, regulations, and regulatory agreements, or simply as matter of discretion, various state agencies, including DHCR, have been reviewing changes in title, beneficial interests, controlling interests, and management, as well as the creation of new housing companies without causing undue delay or hardship to the regulated parties. DHCR believes it has the staff capacity to act within a reasonable time-frame and to work with all affected parties to do so.

Comment: Under Section 1733(a), the scope of review should be limited to compliance with the PHFL. The Commissioner should not have the ability to review and approve any partnership provisions which are not regulated by the PHFL.

Response: In considering this comment, DHCR believes it has a duty to inquire into those areas which affect the purposes of the PHFL. While in most instances these are areas which are expressly addressed in the PHFL, there are instances where a matter has a significant impact on the purposes of the PHFL though not specifically referenced in the statute.

Comment: The areas of review should be specifically enumerated so all parties know what is expected. DHCR’s staff lacks the expertise to evaluate and should not be expected to review and approve complicated partnership agreements.

Response: DHCR reviewed its regulations with this comment in mind, but finds that the regulations are sufficiently explicit. DHCR will limit its review to what is necessary under the circumstances, and can evaluate what is appropriate to fulfill its supervisory responsibilities.

Comment: Under Section 1733(b), distributions to partners should not be subject to the Commissioner’s prior approval because the Commissioner’s staff does not have the capacity to do this review in a timely manner. The Commissioner has the power to audit the financial statements of the partnership and may act on unauthorized distributions afterwards.

Response: In considering this comment, DHCR believes that historically it has routinely conducted prior review of these distributions without causing undue delay or burden upon the regulated parties.

Comment: The provision of section 1733(c) which prohibits contracts with persons or entities in which other partners have a “direct or indirect interest” “controlled by the partners” without the Commissioner’s prior approval is vague and “indirect interest” is not explained.

Response: This language has been part of the Regulations with respect to DHCR’s identity of interest provisions since their enactment in 1992. (See, 9NYCRR.1725-2.5 and 1729-1.4) and appears in PHFL Section 32(5)(d) which delineates DHCR’s investigative authority. Given its historical usage, DHCR foresees no difficulty in interpreting this section.

Comment: Under Section 1733(c), contracts involving interests held by limited partners should not be included among the contracts requiring prior approval of the Commissioner. Partnerships have many partners, including limited partners, for instance, who may have interests in other companies which may have contracts with the housing company of which the partners are not even aware. These partners have no role with respect to the operation of the partnership. Many of the investors in low-income housing tax credit projects which are investors in projects preserving Mitchell Lama housing are financial institutions or affiliated with very large financial institutions which may have other contracts with the partnerships and general partners apart from the investment. Any approval should be limited to affiliates of the general partner and limited to material contracts involving material sums.

Response: This comment is found to have merit. Accordingly, Section 1733(c) is revised to exclude limited partners who do not actively participate in the operation or management of the property from the requirement that such contracts receive the prior approval of the Commissioner. However, the exclusion of contracts involving limited partners who do not actively participate in the operation or management of the property from the requirement that such contracts be first approved by the Commissioner does not preclude DHCR from reviewing such business relationships as is necessary to fulfill its supervisory function. PHFL Section 32(5)(d) provides that DHCR may “investigate into the affairs of a company and into the dealings, transactions or relationships of such company with third persons and into the affairs of any person, firm, corporation or other entity having a financial interest, whether direct or indirect, in the design, construction, acquisition, reconstruction, rehabilitation, improvement, financing or operation of any project undertaken by a company.” This change brings the standard of review more in line with the standard of review contained in Section 1733(d) wherein transfers involving limited partners are generally not subject to prior approval of the Commissioner.

Comment: While most of the factors for review listed in 1733(f) are reasonable, factor 10, which allows the Commissioner to consider “other factors which bear on the capacity of the purchaser or transferee to maintain the project in good physical and financial condition and otherwise comply with program requirements” is vague and does not set forth standards as to what will be considered.

Response: The list represents an attempt to anticipate the most common relevant factors. However, others may present themselves in the course of DHCR’s case-by-case review. Accordingly, a certain level of discretion is required to meet circumstances as they arise, and any such review pursuant to Section 1733(f)(10) will be on notice and with an opportunity to be heard.

Comment: Section 1733(g) is vague and appears to authorize the Commissioner to act in areas beyond her authority or expertise. The Commissioner does not have the authority to interpret or enforce statutes or local law except as provided in the PHFL.

Response: Both DHCR and the New York City Department of Housing Preservation and Development (“HPD”) have interpreted provisions of other documents and local law which may preclude dissolution. The agencies’ determinations are subject to judicial review, and there has been significant litigation over such issues. DHCR’s staff is accustomed to conducting this type of review, as are many law firms and title insurance companies as a matter of course as part of a due diligence review.

Comment: If these or similar regulations are enacted, they should only be effective with respect to contracts to transfer partnership or housing company interests entered into after the effective date of the regulations. Individuals, housing companies and partnerships have entered into contracts in good faith with respect to existing law and expended substantial sums under these contracts. Entities which have entered contracts after being advised that DHCR did not have rules or regulations requiring such approval would be adversely affected by having to comply with these regulations.

Response: The proposed regulations are largely intended to be a codification of current practice and therefore will not subject a party to more stringent review than existed prior to their effective date. However, these regulations are remedial in nature, and are being promulgated based on concerns raised in transactions coming before the agency. DHCR reached out to affected parties advising them that these regulations were being contemplated. As to prior transactions completed by parties who were unaware of the need for review, the regulations do not provide for automatic nullification of prior transfers, and in cases of possible undue hardship or prejudice DHCR will entertain requests for waivers on a case-by-case basis. Note that while an applicant before an agency does not have the right to keep the applicable rules unchanged, under 9 NYCRR Section 1725-2.8, where a proceeding is pending prior to the adoption of a rule, DHCR has discretion to continue processing under the rules in effect when the proceeding was commenced. DHCR believes it can exercise its discretion appropriately.

Comment: The costs will not be minimal. The Commissioner will need to hire and train additional staff to implement these rules, and compliance with the disclosure and approval processes at the federal and municipal level will involve substantial costs to the housing company.

Response: In balancing the need for regulation against the possibility of undue regulatory burden, DHCR selected this alternative over the more burdensome one of review of every partnership interest, including limited partners, as suggested by one commentator.

Office of Mental Health

NOTICE OF ADOPTION

Requirements Related to Problem and Compulsive Gambling Treatment Programs

I.D. No. OMH-23-08-00006-A

Filing No. 748

Filing date: July 22, 2008

Effective date: Aug. 6, 2008

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

Action taken: Repeal of Part 509 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 32.02

Subject: Requirements related to problem and compulsive gambling treatment programs.

Purpose: Repeal of rule which is no longer applicable to the Office of Mental Health.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-23-08-00006-P, issue of June 4, 2008.

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

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

Assessment of Public Comment

The agency received no comments.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-32-08-00001-P

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

Action taken: This is a consensus rule making to amend Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.01

Subject: Medical assistance payment for outpatient programs.

Purpose: To provide increased reimbursement rates & COLAS for certain mental health treatment programs as per the 08-09 State budget.

Text of proposed rule: 1. Paragraph (4) of subdivision (a) of section 588.13 of Title 14 NYCRR is amended to read as follows:

(4) Reimbursement under the medical assistance program for day treatment programs serving children shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day	at least 5 hours	\$[76.25]	79.48
Half day	at least 3 hours	[38.13]	39.75
Brief day	at least 1 hour	[25.42]	26.50
Collateral	at least 30 minutes	[25.42]	26.50
Home	at least 30 minutes	[76.25]	79.48
Crisis	at least 30 minutes	[76.25]	79.48
Preadmission- full day	at least 5 hours	[76.25]	79.48
Preadmission- half day	at least 3 hours	[38.13]	39.75

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day	at least 5 hours	\$[73.71]	76.84
Half day	at least 3 hours	[36.85]	38.41
Brief day	at least 1 hour	[24.53]	25.57
Collateral	at least 30 minutes	[24.53]	25.57
Home	at least 30 minutes	[73.71]	76.84
Crisis	at least 30 minutes	[73.71]	76.84
Preadmission- full day	at least 5 hours	[73.71]	76.84
Preadmission- half day	at least 3 hours	[36.85]	38.41

2. Subdivision (b) of section 588.13 of Title 14 NYCRR is amended to read as follows:

(b) Reimbursement under the medical assistance program for regular, collateral, and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be \$[22.66] 23.39 for each service hour.

(2) For programs located in New York City, the fee shall be \$[29.76] 30.71 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be \$[25.01] 25.81 for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be \$[17.15] 17.70 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be \$[21.26] 21.94 for each service hour.

3. Subdivision (c) of section 588.13 of Title 14 NYCRR is amended to read as follows: (c) Reimbursement under the medical assistance program for on-site and off-site visits for all non-state operated intensive psychiatric rehabilitation treatment programs, licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at \$[24.42] 25.20 for each service hour.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

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

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

Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to implement or conform to non-discretionary statutory provisions. No person is likely to object to this rulemaking since it conforms to Chapter 54 of the Laws of 2008, the enacted State Budget for 2008-09, by providing increased medical assistance reimbursement rates for free-standing Children's Day Treatment Programs and cost of living adjustments (COLA) for the Office of Mental Health's Partial Hospitalization Programs and Intensive Psychiatric Rehabilitation Treatment Programs (IPRT). There are no costs to providers or local governments associated with these amendments. Pursuant to Mental Hygiene Law, these rate increases have been approved by the Director of the Division of the Budget.

The language authorizing the increase to medical assistance payments for free-standing children's day treatment programs appears on page 404 of Chapter 54 of the Laws of 2008. Implementation of the increased medical assistance payments for free-standing children's day treatment programs was budgeted to cost New York State \$300,000 annually, and appropriations for the state share of Medicaid were included on page 404, line 12, of Chapter 54 of the Laws of 2008.

The language authorizing the 2008-09 COLA for Partial Hospitalization and certain other programs appears on pages 391-392 and 402 of Chapter 54 of the Laws of 2008. Implementation of the 2008-09 COLA was budgeted to cost New York State \$102,720 annually, and appropriations for the state share of Medicaid were included on page 393, line 12, of Chapter 54 of the Laws of 2008 and page 403, line 43, of Chapter 54 of the Laws of 2008.

The language authorizing the 2008-09 COLA for IPRT and certain other programs appears on pages 391-392 and 402 of Chapter 54 of the Laws of 2008. Implementation of the 2008-09 COLA was budgeted to cost New York State \$197,046 annually, and appropriations for the state share of Medicaid were included on page 393, line 12, of Chapter 54 of the Laws of 2008 and page 403, line 43, of Chapter 54 of the Laws of 2008.

As the requirements identified above conform to non-discretionary statutory provisions, this rulemaking is non-controversial and is appropriately filed as a Consensus rule. These regulatory amendments will be effective upon their adoption, and the rate increases and COLAs associated with the 2008-09 enacted budget shall be deemed to have been effective on April 1, 2008.

Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and respon-

sibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.01 of the Mental Hygiene Law gives the Commissioner the authority to set rates for outpatient services at facilities operated by the Office of Mental Health. Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Division of Budget.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it merely provides for increased medical assistance reimbursement rates for free-standing Children's Day Treatment Programs and cost of living adjustments (COLA) for the Office of Mental Health's Partial Hospitalization Programs and Intensive Psychiatric Rehabilitation Treatment Programs (IPRT), consistent with the enacted budget for State Fiscal Year 2008-09. It is evident that there will be no adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operation of Outpatient Programs

I.D. No. OMH-32-08-00002-P

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

Action taken: This is a consensus rule making to amend Part 587 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 7.15 and 31.04

Subject: Operation of outpatient programs.

Purpose: To increase the number of children's designated specialty clinics in New York City, in accordance with the enacted 2008-09 State Budget.

Text of proposed rule: 1. Subdivision (d) of section 587.5 of Title 14 NYCRR is amended to read as follows:

(d) The county director of community services shall be responsible for identifying specific licensed clinic treatment programs to be designated by the [commissioner] *Commissioner* as interim specialty clinic programs serving children in accordance with the identified need within the county. In making such identification, the county director of community services shall use the following criteria:

(1) All licensed satellites of a recommended provider in the same county shall be included if so designated by the [commissioner] *Commissioner*. New York City is one county for such purposes.

(2) A county with less than one percent of children in New York State, as defined in accordance with section 587.4(a)(4) and (8) of this Part, may have up to two designated providers. If only one licensed clinic is included on the recommended list, the county director of community services may recommend a second licensed clinic without recent Medicaid experience serving children. The Office of Mental Health may approve these recommendations based upon competence of a licensed clinic treatment program to serve such children and[,] upon accessibility to the clinic by such children. Accessibility shall be based upon a geographic area rather than a catchment area of the recommended licensed clinic treatment program.

(3) A county with at least one percent and less than three percent of the projected number of children in New York State, as defined in accordance with section 587.4(a)(4) and (8) of this Part, may recommend up to six licensed clinic treatment programs including all licensed satellites of such recommended providers.

(4) A county with at least three percent and less than eight percent of the children in New York State, as defined in accordance with section 587.4(a)(4) and (8) of this Part, may recommend up to 10 licensed clinic treatment programs.

(5) [A county with eight percent or more of the children in New York State, as defined in accordance with section 587.4(a)(4) and (8) of this Part.] *The City of New York* may recommend up to [15] 85 licensed clinic treatment programs.

(6) New York City may reallocate the total number of licensed clinics of the five boroughs which appear on the recommended list amongst the five boroughs. However, no more than the total number of licensed clinic treatment programs which appear on the list for the five boroughs shall be designated as interim specialty clinic treatment programs serving children.

2. Subdivision (e) of section 587.5 of Title 14 NYCRR is amended to read as follows:

(e) The [commissioner] *Commissioner* shall designate a licensed clinic treatment program to provide interim specialty children's services to children as defined in accordance with section 587.4(a) of this Part. A clinic treatment program so designated shall be authorized to provide, and be reimbursed for providing, clinic treatment services to children notwithstanding the child's enrollment in a Medicaid managed care program. Such a clinic shall be designated as an interim specialty clinic treatment program serving children and shall operate in accordance with section 587.9 of this Part and Part 588 of this Title. An interim specialty clinic treatment program serving children shall be determined to meet at least one of the following criteria:

(1) In a county with less than three percent of the projected population of children in New York State, as defined in section 587.4(a) of this Part, the criteria for inclusion as a designated interim specialty clinic treatment program serving children includes:

(i) any licensed clinic treatment program, including all licensed satellite locations within the county, that had total Medicaid visits by children exceeding 400 visits annually for Federal fiscal year 1992; or

(ii) any one licensed clinic treatment program location which had more than 200 Medicaid visits by children representing more than 75 percent of total Medicaid volume of visits at that location; or

(iii) all licensed clinic treatment programs in a county with two or fewer clinic treatment programs serving children; or

(iv) all county-operated clinic treatment programs serving children.

(2) In a county with three percent or more of the projected population of children in New York State, as defined in section 587.4(a)(4) and (8) of this Part, the criteria for inclusion as a designated interim specialty clinic treatment program serving children includes:

(i) any licensed clinic treatment program, including all licensed satellites within the county *or the City of New York*, which had total Medicaid visits by children exceeding 700 visits annually for Federal fiscal year 1992; or

(ii) any one licensed clinic treatment program location which had more than 300 Medicaid visits by children representing more than 50 percent of total Medicaid volume of visits at that location; or

(iii) all licensed clinic treatment programs primarily serving physically handicapped or non-English speaking children; or

(iv) all county operated clinic treatment programs.

(3) In a county with one percent or more of the projected population of children in New York State, as defined in accordance with section 587.4(a)(4) and (8) of this Part, the [commissioner] *Commissioner* shall not designate a clinic treatment program as an interim specialty clinic treatment program serving children which is not on the list recommended by the county director of community services, even if the list contains less than the maximum number of recommended clinic treatment programs as provided by the county director of community services with the exception of clinic treatment programs primarily serving special populations, including, but not limited to, physically handicapped or non-English speaking children. Such clinic treatment programs may be added to the list of recommended clinic treatment programs. Any additions made to the list of recommended licensed clinic treatment programs shall not increase the total number of programs to be designated as interim specialty clinic treatment programs serving children in a county.

3. Subdivision (b) of section 587.7 of Title 14 NYCRR is amended to read as follows:

(b) A provider of service shall provide a notice of recipients' rights as described in subdivision (a) of this section to each recipient upon admission to an outpatient program. Such notice shall be provided in writing and posted in a conspicuous location easily accessible to the public. The notice shall include the address and telephone number of the Commission on Quality of Care [for the Mentally Disabled] *and Advocacy for Persons with Disabilities*, the nearest regional office of the Protection and Advocacy for Mentally Ill Individuals Program, the nearest chapter of the Alliance [for the Mentally Ill of] *on Mental Illness* of New York State and the Office of Mental Health.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocabjdd@omh.state.ny.us

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

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

Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to implement or conform to non-discretionary statutory provisions. No person is likely to object to this rulemaking since it merely increases the number of children’s designated specialty clinics in the City of New York, in accordance with the enacted 2008-2009 State budget.

Section 587.5 of Title 14 NYCRR defines the criteria for identifying eligible clinics, based on both the size of the population in each county or the City of New York and the number and percentage of children served in each clinic. These formulas and designations were developed to assure that children and families had access to clinics that were experienced in the treatment of children. The original designations were based on 1994 billing data. The formula for New York City limits the number of clinic programs that can be designated to 66 (15 each for the four boroughs and 6 for Staten Island). There are currently 19 additional programs that provide treatment for significant numbers of children and adolescents with serious emotional disturbances. This consensus regulation would allow all clinics licensed to the Health and Hospitals Corporation to be considered as one designated unit, and increases the overall number of clinics that can be designated in New York City, for a total of 19 new designated specialty clinics. This will create the additional capacity needed to designate the remaining clinic treatment programs with significant utilization and promote access to needed specialty care for some of New York City’s most vulnerable young people. As the regulatory amendments identified above conform to non-discretionary statutory provisions, this rulemaking is non-controversial and is appropriately filed as a Consensus rule.

Statutory Authority: Sections 7.09(b), 7.15 and 31.04(a) of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the power and responsibility to plan, establish and evaluate programs and services for the benefit of persons with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it merely increases the number of children’s designated specialty clinics in the City of New York, in accordance with the 2008-09 enacted State budget. There will be no adverse impact on jobs and employment opportunities.

renewed standard license document shall be mailed to the licensee. *Notwithstanding any inconsistent provision of this subdivision, a licensee making application for an enhanced driver license issued pursuant to section 503(2)(f-1) of the Vehicle and Traffic Law may renew more than one year prior to the expiration of their driver license, but in no event earlier than six months from the issuance of the driver license being renewed. The enhanced driver license document shall be mailed to the licensee.*

Text of proposed rule and any required statements and analyses may be obtained from: Carrie L. Stone, Department of Motor Vehicles, Counsel’s Office, Rm. 526, Six Empire State Plaza, Albany, NY 12228, (518) 474-0871

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:

The Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, established several measures to enhance the security of the United States. One proposal was the Western Hemisphere Travel Initiative (WHTI), as set forth by the Department of Homeland Security (DHS) in the June 26, 2007 and April 3, 2008 issues of the Federal Register. A key component of WHTI is the issuance of an enhanced driver’s license (EDL) that will enable US citizens to more easily enter the United States at land and sea crossings.

On October 26, 2007, the Department of Motor Vehicles (DMV) entered into a Memorandum of Agreement with DHS for the issuance of EDL’s. Pursuant to that agreement, DMV intends to begin the issuance of EDLs on September 16, 2008.

DMV currently issues 8-year renewals of driver licenses. DMV’s current practice allows renewals up to 1-year prior to the date of expiration of the license. However, if a licensee applies for an EDL prior to the current “window” for renewal (“off-cycle”), the EDL must be processed as an “amendment” of the current license under Vehicle and Traffic Law, Section 505(4), and a \$30.00 EDL fee will be applied in addition to a \$10.00 amendment fee. There is no provision of law that authorizes a proration of the \$30.00 fee, based upon the remaining validity of the current license. Therefore, at the time of the next renewal, the licensee will have to pay another \$30.00 EDL fee in addition to the standard renewal fees.

The proposed regulation would amend 15 NYCRR Part 3.3(b) to provide that licensees making application for an EDL may opt to renew the license more than one year prior the expiration of their driver license, effectively “re-setting” their 8-year renewal term. By permitting this “off-cycle” renewal, licensees will receive an EDL valid for a full 8 years for the \$30.00 fee and will receive a proration of the license renewal fees based on the number of years left in their current renewal cycle. New Yorkers will be more apt to see the EDL as the travel document of choice if the cost of obtaining one compares favorably with the cost of obtaining alternative documents, such as a passport or PASS card.

The proposed regulation also amends the time to renew a state (i.e., non-EDL) driver license from six months to one year prior to the date of its expiration. This change simply reflects the current DMV policy and procedure regarding renewal of state driver license.

Lastly, the proposed regulation provides that an application for an EDL may not be made until at least six months from the issuance of the current driver license. Credits for time for purposes of calculating fees in license renewal cycles are calculated in 6-month intervals. In order to properly calculate credits for an EDL applicant, at least one 6-month cycle from the beginning of a license period needs to be completed.

This is submitted as a consensus rule as no person is likely to object to the rule as proposed and written.

Job Impact Statement:

A job impact statement is not submitted with this regulation because making a change to the license renewal application period, providing time frames regarding an enhanced driver license application and providing for mailing of an enhanced driver license shall have no impact on job opportunities in New York State.

Department of Motor Vehicles

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

Renewal of Driver’s Licenses and Enhanced Driver’s Licenses

I.D. No. MTV-32-08-00005-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 amend section 3.3(b) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 502(6)(a) and (b)

Subject: Renewal of driver’s licenses and enhanced driver’s licenses.

Purpose: Establishes renewal cycles for driver’s licenses and enhanced driver’s licenses.

Text of proposed rule: Subdivision (b) of section 3.3 is amended to read as follows:

(b) Renewal of a license *and enhanced driver license.* A valid driver license may be renewed if the applicant is qualified for renewal of the license by making application on a form provided for such purpose to a motor vehicle office from [six months] *one year* prior to two years after the date of expiration of the prior license, paying the appropriate fees, passing a vision test and having his or her photo image taken. Thereafter, the

Public Service Commission

NOTICE OF ADOPTION

Water Rates and Charges by Warwick Water Corporation

I.D. No. PSC-42-07-00018-A

Filing date: July 22, 2008

Effective date: July 22, 2008

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

Action taken: On July 16, 2008, the Public Service Commission adopted an order approving Warwick Water Corporation to increase its revenues of \$31,353 or 13.2 percent effective August 1, 2008.

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

Subject: Water rates and charges.

Purpose: To increase Warwick Water Corporation's annual revenues by \$31,353 or 13.2 percent, effective August 1, 2008.

Substance of final rule: The Commission, on July 16, 2008, adopted an order approving Warwick Water Corporation to increase its annual revenues by \$31,353 or 13.2%, effective August 1, 2008, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, e-mail: leann_ayer@dps.state.ny.us

Assessment of Public Comment:

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

(07-W-1129SA1)

NOTICE OF ADOPTION

Transfer of a Certain Gas Plant between Seneca Resources Corporation and National Fuel Gas Supply Corporation

I.D. No. PSC-49-07-00009-A

Filing date: July 16, 2008

Effective date: July 16, 2008

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

Action taken: On July 16, 2008, the commission adopted an order approving the petition of Seneca Resources Corporation for the transfer of approximately 15.33 miles of pipeline and facilities in Olean, NY, to National Fuel Gas Supply Corporation (NFGS).

Statutory authority: Public Service Law, section 70

Subject: Transfer of gas facilities to National Fuel Gas Supply Corporation.

Purpose: To approve the transfer of gas facilities to National Fuel Gas Supply Corporation.

Substance of final rule: The Commission, on July 16, 2008, adopted an order approving the petition of Seneca Resources Corporation (Seneca) to transfer approximately 15.33 miles of pipeline and facilities in Olean, New York, to National Fuel Gas Supply Corporation (NFG). NFG will continue to provide gas transportation services for three of Seneca's customers, Dresser-Rand Company, St. Bonaventure University and Indeck-Olean Limited Partnership, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, e-mail: leann_ayer@dps.state.ny.us

Assessment of Public Comment:

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

(07-G-0378SA1)

NOTICE OF ADOPTION

Recovery of Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-08-00011-A

Filing date: July 18, 2008

Effective date: July 18, 2008

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

Action taken: On July 16, 2008, the Public Service Commission adopted an order, granting in part the petition for rehearing of Consolidated Edison Company of New York, Inc., to recover costs for mechanical and electrical shut-down at the Hudson Avenue Plant.

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

Subject: Recovery of expenses from electric ratepayers.

Purpose: To approve in part the recovery of expenses for plant shut down from electric ratepayers.

Substance of final rule: The Commission, on July 16, 2008, adopted an order, granting in part the petition for rehearing of Consolidated Edison Company of New York, Inc., (the Company) to recover \$360,000 for mechanical and electrical shut-down at the Hudson Avenue Plant from its electric ratepayers through the Company's Monthly Adjustment Clause, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, e-mail: leann_ayer@dps.state.ny.us

Assessment of Public Comment:

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

(01-E-0147SA3)

NOTICE OF ADOPTION

Merger between KeySpan Communications Corp. and Light Tower Fiber LLC

I.D. No. PSC-19-08-00007-A

Filing date: July 17, 2008

Effective date: July 17, 2008

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

Action taken: On July 16, 2008, the Public Service Commission adopted an order approving the joint petition of Light Tower Fiber LLC and KeySpan Communications Corp. for the merger of membership interests and related transactions.

Statutory authority: Public Service Law, section 108(1)

Subject: Merger of two companies.

Purpose: To approve merger of Light Tower Fiber LLC and KeySpan Communications Corp.

Substance of final rule: The Commission, on July 16, 2008, adopted an order approving the joint petition of Light Tower Fiber LLC and KeySpan Communications Corp. for the merger and acquisition by Light Tower Fiber LLC of all the membership interests of KeySpan Communications Corp. and various ancillary transactions.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, e-mail: leann_ayer@dps.state.ny.us

Assessment of Public Comment:

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

(08-C-0363SA1)

NOTICE OF ADOPTION

Waiver of and/or Extension of Time to Comply with Certain Requirements of Sections of the Commission's Rules**I.D. No.** PSC-21-08-00004-A**Filing date:** July 18, 2008**Effective date:** July 18, 2008

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

Action taken: On July 16, 2008, the Public Service Commission adopted an order approving the petition of Verizon New York Inc. for limited waivers of certain commission rules in connection with a proposed cable television franchise with the City of New York.

Statutory authority: Public Service Law, sections 216(1) and (5)

Subject: Limited waivers of certain commission rules.

Purpose: To approve limited waivers of certain commission rules in connection with a proposed agreement with the City of New York.

Substance of final rule: The Commission, on July 16, 2008, adopted an order approving the petition of Verizon New York Inc. for limited waivers of Commission rules 895.1(b), 895.1(f), 895.4 and 890.91(b)(1) in connection with a proposed cable television franchise with the City of New York, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, e-mail: leann_ayer@dps.state.ny.us

Assessment of Public Comment:

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

(08-V-0497SA1)

NOTICE OF ADOPTION

Implementation of Outage Recommendations**I.D. No.** PSC-22-08-00002-A**Filing date:** July 21, 2008**Effective date:** July 21, 2008

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

Action taken: On July 16, 2008, the Public Service Commission adopted an order denying the petitions for rehearing by the City of New York and the Consumer Protection Board and granted Consolidated Edison Company of New York, Inc.'s request for an extension of its budget modification deadline.

Statutory authority: Public Service Law, sections 4(1), 5(1), 22, 66(1), (2) and (4)

Subject: Implementation of outage recommendations.

Purpose: To deny the petitions for rehearing and grant an extension for budget modifications.

Substance of final rule: The Commission, on July 16, 2008, adopted an order, denying the petitions for rehearing filed by the City of New York and the Consumer Protection Board and granted Consolidated Edison Company of New York, Inc.'s request for an extension of its budget modification deadline, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, e-mail: leann_ayer@dps.state.ny.us

Assessment of Public Comment:

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

(06-E-0894SA7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Market Supply Charge (MSC)****I.D. No.** PSC-32-08-00008-P

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

Proposed action: A plan filed by Consolidated Edison Company of New York, Inc. regarding revising its market supply charge pursuant to commission order in Case 07-E-0523 issued March 25, 2008.

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

Subject: Market supply charge (MSC).

Purpose: A plan that revises its MSC so that the MSC reflects actual day-ahead market prices.

Substance of proposed rule: The Commission is considering a plan filed by Consolidated Edison Company of New York, Inc. (Con Edison) pursuant to Commission Order issued March 25, 2008 in Case 07-E-0523. In its Order, the Commission directed Con Edison to file a plan revising its Market Supply Charge so that the Market Supply charge reflects actual day-ahead market prices that were in effect during each customer's billing period, identifying specific issues that will need to be resolved and including a proposed implementation schedule along with milestones. The Commission may approve, reject or modify, in whole or in part, Con Edison's proposal.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: leanne_ayer@dps.state.ny.us

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

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

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

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

(07-E-0523SA5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**The ESCO Referral Program for KEDNY to be Implemented by October 1, 2008****I.D. No.** PSC-32-08-00009-P

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

Proposed action: To approve, reject or modify, in whole or in part, the recommended ESCO referral program for Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY) contained in the June 20, 2008 report filed in Case 06-G-1185.

Statutory authority: Public Service Law, sections 65 and 66

Subject: The ESCO referral program for KEDNY to be implemented by October 1, 2008.

Purpose: To approve, reject or modify, in whole or in part, KEDNY's recommended ESCO referral program.

Substance of proposed rule: By order dated December 21, 2007 in Case 06-G-1185, the Commission directed The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY) to conduct a collaborative process with Department of Public Service Staff (Staff) and interested parties to discuss implementation of an Energy Service Company (ESCO) referral program in the KEDNY service territory. The December 21 Order deferred decision on whether and to what extent to implement an ESCO referral program in the KEDNY service territory until receiving sufficient information from the collaborative. The Commission directed the KEDNY to report on the results of the collaborative efforts within 90 days after the issuance of the December 21 Order, which was extended to June 22, 2008 at the Company's request. On June 20, 2008, the Company filed the required report for the Commission's approval, rejection or modi-

fication, in whole or in part, of the proposed ESCO referral program for the KEDNY service territory.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: leanne_ayer@dps.state.ny.us

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.

(06-G-1185SA7)

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

The Gas Revenue Decoupling Mechanism Report Filed by Consolidated Edison Company of New York, Inc. in Case 06-G-1332

I.D. No. PSC-32-08-00010-P

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

Proposed action: The Public Service Commission is considering the revenue decoupling mechanism report filed by Consolidated Edison Company of New York, Inc. in accordance with the order issued in Case 06-G-1332, and all other related matters.

Statutory authority: Public Service Law, sections 65 and 66

Subject: The gas revenue decoupling mechanism report filed by Consolidated Edison Company of New York, Inc. in Case 06-G-1332.

Purpose: To develop recommendations for a gas revenue decoupling mechanism.

Substance of proposed rule: On September 25, 2007, the Public Service Commission (Commission) issued an Order in Case 06-G-1332 which established new delivery rates for Consolidated Edison Company of New York, Inc. (Con Edison). In that Order, Con Edison was charged with convening a gas Revenue Decoupling Mechanism (RDM) collaborative, no later than November 1, 2007, to recommend a RDM for rate years two and three. The RDM collaborative was to be chaired by Con Edison and was charged with evaluating whether a RDM that relied upon rate year billing determinants was reasonable and workable, without precluding the evaluation of other alternatives, including the continuation of the RDM mechanism implemented for rate year one, with or without modifications. Ultimately, Con Edison was to prepare a report to be filed with the Commission on or about April 15, 2008.

Con Edison filed the RDM collaborative report on June 19, 2008. The Commission is considering whether to approve, modify or reject, in whole or in part, the filing made by Con Edison.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: leanne_ayer@dps.state.ny.us

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.

(06-G-1332SA3)

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

Waiver of P.S.C. No. 3—Steam, P.S.C. No. 9—Gas and 16 NYCRR Part 13

I.D. No. PSC-32-08-00011-P

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

Proposed action: Waiver of P.S.C. No. 3- Steam, P.S.C. 9- Gas and 16 NYCRR Part 13 to permit credits to certain steam and gas customers.

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

Subject: Waiver of P.S.C. No. 3—Steam, P.S.C. No. 9—Gas and 16 NYCRR Part 13.

Purpose: To permit credits to certain steam and gas customers who were unable to access their premises during the July 2008 steam rupture.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) for a waiver of any or all provisions of the rate schedules (P.S.C. No. 3 - Steam and P.S.C. No. 9 - Gas) and the Commission rules and regulations in 16 NYCRR Part 13, as may be necessary to permit Con Edison to provide credits to certain steam and gas customers who were unable to access their premises during the July 2008 steam pipe rupture incident.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: leanne_ayer@dps.state.ny.us

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-S-0153SA2)

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

Policies and Procedures Regarding Safety and Reliability

I.D. No. PSC-32-08-00012-P

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

Proposed action: The commission is considering Verizon New York Inc.'s Network Review Plan regarding the proper grounding and bonding of its optical network terminals.

Statutory authority: Public Service Law, sections 215(1) and 216(1)

Subject: Policies and procedures regarding safety and reliability.

Purpose: To establish policies and procedures regarding the safety and reliability of Verizon's optical network terminals.

Substance of proposed rule: The New York State Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, Verizon New York Inc.'s Network Review Plan regarding the proper grounding and bonding of its optical network terminals.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: leanne_ayer@dps.state.ny.us

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-V-0835SA1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Installation, Servicing or Maintaining of Security or Fire Alarm Systems

I.D. No. DOS-32-08-00006-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 196.1, 196.2, 196.8 and 196.10 of Title 19 NYCRR.

Statutory authority: General Business Law, section 69-n

Subject: Installation, servicing or maintaining of security or fire alarm systems.

Purpose: To add an additional qualifying education module for licensure under Article 6-D of the General Business Law.

Text of proposed rule: Section 196.1 is amended to read as follows:

Section 196.1 Basic course requirements

Individuals desiring to satisfy the education requirements to become licensed security or fire alarm system installers must satisfactorily complete [four] *five* courses prescribed by section 196.8 of this Part identified as: Module 1, Module 2, Module 3 [and], Module 4 *and* Module 5. [Each module] *Module 1, Module 2, Module 3 and Module 4* will consist of a program of 15 classroom hours. *Module 5 will consist of a program of 21 classroom hours.*

Section 196.2 is amended to read as follows:

Section 196.2 Equivalency-prelicensing education

The criteria for determining acceptance of courses completed prior to January 1, 1993 shall be that the course or courses have substantially covered the same subject matter, classroom hours of attendance and completed standards as prescribed by the regulations as a prerequisite of licensing. Applications for past course evaluation shall be accompanied by an official transcript or other documentation showing the subjects taken and hours of instruction devoted to each subject and the hours attended by said applicant together with the date completed. The department may request additional supportive documentation to determine course equivalency. Equivalency credit will be granted in 15 hour segments *for courses deemed by the department as equivalent to Module 1, Module 2, Module 3 and Module 4. Equivalency credit will be granted in 21 hour segments for courses deemed by the department as equivalent to Module 5.* If an applicant receives partial credit towards the [60] 81 hour education requirement, the applicant may choose any of the [four] *five* approved modules to complete the requirement.

Section 196.8 is amended to read as follows:

Section 196.8 Security or fire alarm system installer courses

(a) The education qualifications for New York State security or fire alarm systems installer license requires the completion of the following courses of study:

Module 1 Installations: Standards, Codes and Techniques

Module 2 Control Panels and Alarm Transmissions

Module 3 Security Systems

Module 4 Fire Technology

Module 5 Service and Maintenance of Alarm Systems

(b) The following are required subjects to be included in the courses of study and the required number of hours to be devoted to each subject

MODULE #1 INSTALLATIONS: STANDARDS, CODES AND TECHNIQUES

Subject Matter	Time
I. STANDARDS AND CODES	1 HOUR
II. NATIONAL ELECTRICAL CODE, (NEC)-NFPA	4 HOURS

70

III. BASIC ELECTRICITY	10 HOURS
TOTAL	15 HOURS

Final Examination

MODULE #2 CONTROL, PANELS AND ALARM TRANSMISSION

Subject Matter	Time
I. CONTROL DEVICES	6 HOURS
II. JOB PLANNING AND RECORDKEEPING	1 HOUR
III. ALARM TRANSMISSIONS	8 HOURS
TOTAL	15 HOURS

Final Examination

MODULE #3 SECURITY SYSTEMS

Subject Matter	Time
I. HISTORY OF ALARM SYSTEMS--LICENSE LAW	.5 HOUR
II. MOTION DETECTION	8 HOURS
III. PERIMETER SYSTEMS	2.5 HOURS
IV. SPECIALTY SYSTEMS	.5 HOUR
V. CCTV SYSTEMS	1 HOUR
VI. ACCESS CONTROL	1.75 HOURS
VII. FALSE ALARM PREVENTION	.75 HOUR
TOTAL	15 HOURS

Final Examination

MODULE #4 FIRE TECHNOLOGY

Subject Matter	Time
I. FIRE DETECTION AND DETECTOR APPLICATION	1 HOUR
II. FIRE ALARM SYSTEMS	13.5 HOURS
III. JOB SAFETY	.5 HOUR
TOTAL	15 HOURS

Final Examination

MODULE #5 SERVICE AND MAINTENANCE OF ALARM SYSTEMS

Subject Matter	Time
I. OVERVIEW AND PROFESSIONAL CONDUCT	1 HOUR
II. TESTING AND TROUBLESHOOTING	7 HOURS
III. PANELS, ALARM DEVICES AND COMMUNICATIONS	9 HOURS
IV. SPECIALTY ITEMS	1 HOUR
V. MAINTENANCE, INSPECTION AND FALSE ALARM REPORTING	3 HOURS
TOTAL	21 HOURS

Final Examination

Section 196.10 is amended to read as follows:

Section 196.10 Attendance

To satisfactorily complete any course offered for study [,] *for the completion of Module 1, Module 2, Module 3 or Module 4*, a person must physically attend 12 hours of each 15 hour course offering, exclusive of sessions devoted to examinations. *To satisfactorily complete any course offered for study for the completion of Module 5, a person must physically attend 18 hours of each 21 hour course offering, exclusive of sessions devoted to examinations.* Final examinations may not be presented to any students who have not completed the attendance requirements. Attendance records for all students enrolled in approved courses must be retained for a minimum of two years from the date such courses were completed.

Text of proposed rule and any required statements and analyses may be obtained from: Whitney A. Clark, Esq., Department of State, Division of Licensing Services, 80 S. Swan St., P.O. Box 22001, Albany, NY 12231-0001, (518) 473-2728, e-mail: whitney.clark@dos.state.ny.us

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

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

This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the Register.

Regulatory Impact Statement

1. Statutory authority:

General Business Law, section 69-n provides specific authority to the Secretary of State to promulgate regulations to accomplish the purposes of Article 6-D of the General Business Law. Said section also permits the Department of State to examine into the qualifications of applicants for licenses under Article 6-D. Consistent with this authority, section 69-o of the statute, requires license applicants to provide the Department of State with evidence of education that is satisfactory to the Department of State.

The proposed rule making is advanced in accordance with this authority and consistent with the purpose of Article 6-D, to provide improved safeguards for the customers of security and fire alarm system installers.

2. Legislative objectives:

General Business Law Article 6-D requires the Department of State to license and regulate the Business of Installing, Servicing or Maintaining Security of Fire Alarm Systems. License applicants are required to provide the Department of State with proof of having completed satisfactory education. To further the legislative intent that licensees receive adequate education, and to provide prospective licensees with guidance in the form of set educational requirements, the Department of State adopted regulations found at 19 NYCRR 196.8. These regulations were promulgated in response to the statute, as originally enacted. At the time of its initial enactment, the statute only encompassed the installation of alarm systems. The following year, it was amended to include service and maintaining of alarm systems (L 1993, chap. 575). Accordingly, the existing pre-license educational requirement only covers the entry level knowledge required for installation of alarm systems.

As a result of the statutory amendment which added the service and maintenance of alarm systems, the New York State Advisory Committee for the Business of Installing, Servicing or Maintaining of Security or Fire Alarm Systems has developed the proposed additional qualifying education module to ensure that prospective licensees received education in the service and maintenance of alarm systems.

3. Needs and benefits:

Without ensuring that licensees have received training in the proper servicing or maintaining of alarm systems, the integrity of the alarm systems is jeopardized thereby creating an unnecessary safety risk to consumers and the public. Additionally, the improper service or maintenance of alarm systems increases the occurrence of false alarms. Police and fire departments are required to respond to these alarms thereby unnecessarily diverting available resources.

The lack of educational requirements for the service and maintenance of alarm systems is a loop-hole that endangers the health, safety and welfare of the public. The proposed rule making seeks to close this loop-hole by adding an additional pre-license education module in the service and maintenance of alarm systems. This will ensure that licensees have received training in all aspects of the services regulated by Article 6-D; the proper installation, service and maintenance of alarm systems.

4. Costs:

a. Costs to regulated parties:

Regulated parties include those who engage in the practice of installing, maintaining or servicing fire or security alarm systems. The rule does not impose any new requirements on current licensees. Only those applying for initial licensees after the implementation of the rule will be effected. Insofar as prospective licensees are already required to satisfactorily complete a course of education prior to obtaining a license, expanding this education by one additional module should not lead to substantial costs to regulated parties for the implementation of and continuing compliance with the rule.

Currently, the Department of State has three approved education providers, two of which offer the existing four education modules for a total cost of \$900, including the cost of a textbook. The existing four education modules consist of sixty hours of education. Therefore, it is estimated that the existing education costs approximately \$15 per hour of education. The additional education module proposed by this rule making, if adopted, will result in prospective licensees having to complete an additional 21 hours of qualifying education for an estimated cost of \$315.00.

The three approved education providers currently have locations in representative geographic areas throughout the State. It is anticipated that the existing course providers will offer the proposed fifth education module, and that said education will be available to prospective licensees throughout the State.

b. Costs to the Department of State:

The rule does not impose any costs to local government for the implementation and continuation of the rule. The Department of State anticipates that existing resources will be sufficient to implement the rule making, at no additional cost to the State.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements. Insofar as prospective licensees are already required to satisfactorily complete a

course of education prior to obtaining a license, expanding this education by one additional module will not lead to any new paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

Prior to proposing the proposed rule, the Department of State contacted licensees for their comment. Comments were received and considered. Some commented that the proposed educational module is not necessary because the licensing process is already lengthy and time consuming. The Department considered not proposing the rule making in response to these and other similar comments but, after consulting with the New York State Advisory Committee for the Business of Installing, Servicing or Maintaining of Security or Fire Alarm Systems determined that the additional educational module is necessary insofar as the existing education does not address the service and maintenance of alarm systems.

Other comments argued that an additional educational module would make it more difficult for prospective licensees to comply with the statute. In considering this comment, the Department of State again contemplated not advancing the proposed rule. It was determined, however, that requiring education in the service and maintenance of alarm systems would make it easier for licensees to comply with the law insofar as they would receive education in the statutory provisions pertaining to service and maintenance of systems.

Other comments proposed increased enforcement against licensed companies with high rates of false alarms, which are caused, in part, to a lack of proper service and maintenance of alarm systems. The Department of State entertained this proposal but determined that it would be more reasonable to ensure adequate education in proper service and maintenance so as to prevent problems such as false alarms.

9. Federal standards:

There are no federal standards regulating the business of installing, maintaining or servicing fire or security alarm systems. Consequently, this rule does not exceed any existing federal standard.

10. Compliance schedule:

The proposed rule will only impact prospective licensees. Those currently holding licenses will not be required to complete the additional education module. Those persons applying for a license can comply with the amended regulations immediately upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to those applying for an initial license to install, maintain or service security or fire alarm systems. Some of these licensees will work for small businesses. Only these prospective licensees will be effected by the proposed rule and will be required to satisfactorily complete the existing four education modules, plus the proposed fifth module. Those currently holding licenses will not be required to take the additional pre-license education module. Because the rule will only apply to prospective licensees, the Department of State does not have a practical way of estimating how many prospective licensees will be affected by the proposed rule.

The rule does not apply to local governments.

2. Compliance requirements:

The rule does not impose any new reporting or record keeping requirements on licensees. Prospective licensees are already required to satisfactorily complete a course of pre-license education. The rule merely expands the existing educational requirements from four modules to five.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Prospective licensee will need to attend courses offered through approved educational providers in order to comply with the rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

Currently, the Department of State has three approved education providers, two of which offer the existing four education modules for a total cost of \$900, including the cost of a textbook. The existing four education modules consist of sixty hours of education. Therefore, it is estimated that the existing education costs approximately \$15 per hour of education. The additional education module proposed by this rule making, if adopted, will result in prospective licensees having to complete an additional 21 hours of qualifying education for an estimated cost of \$315.00.

The three approved education providers currently have locations in representative geographic areas throughout the State. It is anticipated that the existing course providers will offer the proposed fifth education module, and that said education will be available to prospective licensees throughout the State.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

It is anticipated that approved education providers will offer the proposed fifth education module. These providers currently offer the existing four modules of education. It is expected that these providers will administer and implement the proposed module using existing technology and that it will be technologically feasible for providers to comply with the rule.

It is also expected that prospective licensees will be able to economically comply with the rule. The projected cost of taking the fifth education module is \$315.00.

6. Minimizing adverse economic impact:

The Department of State strived to balance the cost of the new education with the need to amend the existing qualifying education to include all services which alarm licensees may offer. In developing the rule, the Department of State made only those changes it deemed necessary to protect public health, safety and welfare by ensuring the alarm licensees are adequately educated.

7. Small business participation:

Prior to proposing the rule, the Department mailed a copy of the proposed fifth module to all existing licensees and schools and solicited public comment. These comments were reviewed and discussed at a public meeting of the NYS Alarm Advisory Committee. This meeting included a public comment period. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. Small businesses who provide pre-license education have already been provided with notice of the rule and have been afforded an opportunity to comment on the proposal. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rule making. Additional comments will be received and entertained.

Rural Area Flexibility Analysis

1. Need for a Rural Area Flexibility Analysis

The proposed rule will impose reporting, record-keeping and other compliance requirements on private entities in rural areas. It is not anticipated that these requirements will impose an adverse economic impact on these entities. These, and other entities throughout the State.

2. Types of Public and Private Entities in Rural Areas

While the proposed rule will primarily affect prospective licensees, it will also indirectly impact education providers who offer the additional education module proposed by this rule. The Department of State currently has three approved education providers which offer courses in the following counties: Albany, Dutchess, Erie, Genesee, Monroe, Nassau, Onondaga, Ontario, Suffolk, Westchester and New York. Most of these geographic areas are comprised, in part, of rural areas.

3. Compliance Requirements

Education providers are required to comply with Part 196 of Title 19 NYCRR. In relevant part, the regulations require education providers to register courses for approval with the Department of State in accordance with 19 NYCRR 196.3 and 196.7. Among the material which must be submitted with an application are a detailed course outline, final examination and answer key and the books to be used in the course. Education providers will also have to comply with the other requirements of Part 196 by, in part, computing instruction time, maintaining records of attendance, administering examinations, issuing certificates of satisfactory completion and maintaining examination papers for a period of two years.

4. Professional Services

It is anticipated that education providers will administer the requirements imposed by this rule with existing, internal staff. It is not expected that providers will have to rely on professional services to comply with the rule.

5. Costs

It is expected that the costs of implementing this rule will be minimal. It is anticipated that the education providers who have already been approved to offer the existing four education modules will obtain approval to offer the proposed fifth module. As a result, it is expected that education providers will absorb implementation costs with existing staff. It is also anticipated that providers will recoup any such costs by charging students to take the additional module. Currently, the Department of State has three approved education providers, two of which offer the existing four education modules for a total cost of \$900, including the cost of a textbook. The

existing four education modules consist of sixty hours of education. Therefore, it is estimated that the existing education costs approximately \$15 per hour of education. The additional education module proposed by this rule making, if adopted, will result in prospective licensees having to complete an additional 21 hours of qualifying education for an estimated cost of \$315.00.

6. Minimizing Adverse Impact

After soliciting public comments from licensees, the Department of State considered not proposing the rule making. However, after consulting with the New York State Advisory Committee for the Business of Installing, Servicing or Maintaining of Security or Fire Alarm Systems determined that the additional educational module is necessary insofar as the existing education does not address the service and maintenance of alarm systems. Education providers, however, are not required to offer all five education modules. Those providers who deem the impacts of offering a fifth module too adverse, will have the option of not offering the proposed module.

7. Involvement of Regulated Parties

Prior to proposing the proposed rule, the Department of State contacted licensees for their comment. Comments were received and considered. Some commented that the proposed educational module is not necessary because the licensing process is already lengthy and time consuming. Other comments argued that an additional educational module would make it more difficult for prospective licensees to comply with the statute. In considering this comment, the Department of State again contemplated not advancing the proposed rule. It was determined, however, that requiring education in the service and maintenance of alarm systems would make it easier for licensees to comply with the law insofar as they would receive education in the statutory provisions pertaining to service and maintenance of systems.

Other comments proposed increased enforcement against licensed companies with high rates of false alarms, which are caused, in part, to a lack of proper service and maintenance of alarm systems. The Department of State entertained this proposal but determined that it would be more reasonable to ensure adequate education in proper service and maintenance so as to prevent problems such as false alarms.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for licensed alarm installers.

19 NYCRR Part 196 already requires prospective licensees to complete a course of education. The rule amends the agency's existing regulations to add an additional module to the already existing educational requirements. Insofar as potential licensees are already required to complete a course of study prior to obtaining a license, adding an additional education module will not have any foreseeable impact on jobs or employment opportunities for alarm installers.

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

Cease and Desist Zone for the County of Kings

I.D. No. DOS-32-08-00007-P

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

Proposed Action: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h

Subject: Cease and desist zone for the County of Kings.

Purpose: To extend and expand an existing cease and desist zone for the County of Kings.

Text of proposed rule: An Amendment to 19 NYCRR Part 175.17(c)(2) is adopted to read as follows:

(c)(2) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	August 1, 2009

Within the County of Bronx as follows:

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 9, 10, 11 and 12, and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence

southerly along Long Island Sound while including City Island to East River; thence westerly and northwesterly along East River to Bronx River; thence northwesterly and northerly along Bronx River to Sheridan Expressway; thence northeasterly along Sheridan Expressway to Cross Bronx Expressway; thence southeasterly and easterly along Cross Bronx Expressway to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone	Expiration Date
County of Queens	August 1, 2009
Cease and Desist Zone (Mill Basin/Brooklyn)	

Zone	Expiration Date
County of Kings (Brooklyn)	November 30, [2007]2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, [and] Marine Park *and Madison Marine*, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to [Gerritsen Avenue] *Kings Highway*; thence [southeasterly along Gerritsen Avenue and the southern prolongation of Gerritsen Avenue] *southwesterly along Kings Highway to Ocean Avenue; thence southerly along Ocean Avenue to Shore Parkway*; thence northeasterly, *southeasterly*, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; *thence northwesterly along Paerdegat Basin and northern prolongation of Paerdegat Basin* to Flatlands Avenue and the point of beginning.

Cease and Desist Zone
(Canarsie)

Zone	Expiration Date
County of Kings (Brooklyn)	May 31, 2008

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection of Stanley Street and East 108th Street; thence southeasterly along East 108th Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Shore (Belt) Parkway; thence southwesterly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

Text of proposed rule and any required statements and analyses may be obtained from: Whitney A. Clark, Esq., Department of State, Division of Licensing Services, Alfred E. Smith State Office Bldg., 80 S. Swan St., P.O. Box 22001, Albany, NY 12231-0001, (518) 473-2728, e-mail: whitney.clark@dos.state.ny.us

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

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

This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the Register.

Regulatory Impact Statement

1. Statutory authority:

Real Property Law (RPL) section 442-h(3)(a) permits the Department of State (DOS) to adopt a rule establishing a cease and desist zone for a

defined geographic area if it is determined that some owners of residential real property within the defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale with such real estate broker or salesperson. RPL section 442-h(3)(c) provides that a cease and desist zone shall be effective for a maximum of five years, after which the Secretary of State may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. Based on testimony received at a public hearing on September 6, 2007, the Secretary has determined that some homeowners residing in the proposed cease and desist zone in Brooklyn are subject to intense and repeated solicitation. Accordingly, DOS has express authority to adopt this rule, which extends and expands an existing cease and desist zone in several Brooklyn communities.

2. Legislative objectives:

In enacting RPL section 442-h, the Legislature highlighted the problems faced by some residents from intense and repeated solicitation to list their homes for sale. Recognizing that not all homeowners who are the subject of this solicitation are desirous of being solicited, the Legislature authorized the Secretary to determine if a cease and desist zone should be established. Upon the establishment of such a zone, a homeowner may file with the Secretary a statement of desire not to be solicited. Thereafter, the Secretary will publish a list of the names and addresses of the persons who have filed the statement, and brokers and salespersons are then prohibited from soliciting persons on that list. That list is commonly referred to as a "cease and desist list."

Thus, RPL section 442-h was designed to protect the public. This rule re-enforces the objectives of the Legislature when it enacted RPL section 442-h by extending and expanding a cease and desist zone for an area that has demonstrated that some residents are the subject of intense and repeated solicitation. The current cease and desist order will be extended for an additional five years, and will be due to expire on November 30, 2012.

3. Needs and benefits:

DOS held a public hearing on September 6, 2007 at Junior High School 78 in Brooklyn, NY to determine whether to extend the cease and desist order that expired on November 30, 2007. The defined cease and desist zone would be the Mill Basin area of Brooklyn, which includes the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine. At the public hearing, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeated solicitation to list their homes for sale. The speakers included elected officials, local representatives and homeowners within the existing and proposed cease and desist zone. The speakers spoke primarily in support of the proposed cease and desist zone, citing the need to curb the aggressive solicitation practices of real estate agents in the affected communities. The speakers cited frequent mailings, unwanted flyers, as well as door-to-door solicitation as intrusive and unwanted solicitation practices by real estate brokers and salespersons. DOS held the record open after the public hearing to afford others the opportunity to submit written testimony and proof of undesired solicitation. The additional material provided to DOS was consistent with that obtained during the public hearing.

As of July 2007, DOS had received 1,314 homeowners' statements from the Mill Basin area. The widespread resident support evidenced by the number of homeowner statement filings, coupled with the testimony and evidence submitted to DOS as part of the public hearing, amply demonstrate that some residents within the proposed geographic area are the subject of intense and repeated solicitation to list their homes for sale. This rule making will benefit residents of the defined area by providing a mechanism for them to notify DOS that they do not wish to be solicited.

4. Costs:

a. Costs to regulated parties:

The costs to real estate brokers and salespersons are minimal. DOS licenses approximately 11,926 real estate licensees in Brooklyn. DOS maintains copies of the cease and desist lists on its website. This list is available for all to view, at no cost. Additionally, DOS will mail a copy of the list to any person desiring a copy for the minimal cost of \$10.00.

b. Costs to the Department of State:

DOS anticipates that the cost and implementation of this rule will be minimal, and administration of this rule will be accomplished using existing resources. The estimated costs are as follows:

- Printing owners statements \$2,200
- Mailing owners statements \$640
- Processing statements:
- Staff: SG-13: \$37,072
- SG-23: \$58,406

10 weeks: \$7,129-\$11,231

Data entry:

Staff: SG-6: \$25,146

SG-9: \$29,595

SG-13: \$37,072

10 days: \$688-\$1,015

The costs for printing and mailing the cease and desist list are unknown. DOS anticipates that most licensees will access the list, at no cost, on its website. For those few who want to purchase a paper copy, DOS will likely print a copy, on an order-by-order basis, on existing equipment. The mailing costs will be dependent on the number of copies that are ordered. However, DOS expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

DOS expects that revenues from the sale of the list will be incidental to the costs of preparing, printing and mailing.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on the State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

Homeowners who do not want to be solicited will have to file an 'owner's statement' with DOS. The owner's statement will indicate the owner's desire not to be solicited and will set forth the owner's name and the address of the property within the cease and desist zone. DOS will provide homeowners with a standard form, although use of the form is not mandatory. Owner's statements will be provided to community leaders for distribution to their constituents. In addition, owner's statements will be available from DOS on request, as well as being available on its website. DOS will prepare a cease and desist list containing the names and addresses of all of the homeowners who filed an owner's statement. The list will be available, at no cost, on its website. The list will also be sold to the public, including real estate brokers and salespersons. The price will be \$10 per copy. Besides any request for cease and desist lists that they submit by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

This rule extends an existing cease and desist zone that was due to expire on November 30, 2007. It does not otherwise duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

DOS did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to RPL section 442-h(2)(a). However, DOS concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone.

DOS also considered allowing the prior cease and desist order to expire in November 2007, and/or to not expand the prior cease and desist zone. It was determined, however, that allowing the order to expire, and/or failing to expand the prior zone, would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitation to sell their homes.

DOS did not consider any other alternatives.

9. Federal standards:

There are no federal standards addressing the subject of this rule making.

10. Compliance schedule:

Real estate licensees currently are required to comply with 19 NYCRR Part 175.17(c)(2). The original cease and desist zone contained in that part and addressed in this rule making expired on November 30, 2007, and had been in place for five years. DOS has extended this cease and desist zone by means of two 90-day emergency rule makings - the first took effect on November 26, 2007, and the second has been effective since February 25, 2008. Therefore, regulated parties currently are complying with the requirements proposed in this rule making.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule would extend and expand an existing cease and desist zone, and thereby would prohibit real estate brokers and salespersons from soliciting any resident within that zone that does not wish to be solicited.

The defined cease and desist zone would be the Mill Basin area of Brooklyn, New York, which includes the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine. This rule will apply to most of the 11,926 real estate brokers and salespeople that have offices in Brooklyn, and many of these licensees in turn are small businesses, or are associated with small businesses. Real estate brokers and salespersons will remain free, however, to solicit listings from other residents in the defined zone and to participate in regulated transactions within the zone. Insofar as the rule making seeks to extend and expand an existing cease and desist zone, it is not anticipated that the solicitation limitations will place an undue financial burden or impose a hardship on real estate brokers and salespersons.

The rule does not apply to local governments.

2. Compliance requirements:

The Department of State (DOS) publishes and makes available a list of residents within cease and desist zones who have notified the Department that they do not wish to be solicited by real estate brokers and salespersons. These lists are made available to real estate brokers and salespersons. To comply with the rule, these licensees need only refer to the list prior to soliciting listings from homeowners within the defined cease and desist zone.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Licensees will not incur any significant compliance costs associated with this rule. DOS publishes a free list of all cease and desist lists on its website at no cost. Licensees who desire a hard copy of the lists may notify DOS and receive a copy of the list by mail for a cost of \$10.00.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of the implementation of this rule.

6. Minimizing adverse economic impact:

DOS did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to section 442-h(2)(a) of the Real Property Law. However, DOS concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, in order to minimize the adverse economic impact of this rule, the Secretary of State decided to adopt the cease and desist order rather than a non-solicitation order.

7. Small business and local government participation:

On September 6, 2007, DOS held a public hearing at Junior High School 78 in Brooklyn to consider proposing this rule making. The hearing was publicized in advance and was open to all interested parties. Representatives of local community boards, State and local elected officials, and consumers attended and provided evidence of the need to extend and expand the then-existing cease and desist zone. One real estate professional attended but did not offer any comment other than having a general interest in the hearing. In addition, DOS kept the hearing record open in order to permit individuals and businesses to submit written testimony and evidence after the open public hearing.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule does not apply to rural areas and, rather, applies only to a defined geographic area within the County of Kings.

2. Reporting, recordkeeping and other compliance requirements:

This rule, which applies only to a portion of urban Kings County, does not impose any reporting and record-keeping requirements on licensees located within rural areas.

3. Costs:

The rule does not impose any costs on rural areas.

4. Minimizing adverse impact:

Insofar as the rule does not impose any costs on rural areas, no alternatives to minimize adverse impacts were considered by the Department of State.

5. Rural area participation:

Insofar as the rule does not apply to rural areas, rural area participation was not solicited by the Department of State.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. The rule merely prohibits real estate brokers and salespersons from soliciting real estate listings from residents of a defined geographic zone who have notified the Department of State that they do not wish to be solicited. Real estate brokers and salespersons will remain free to solicit other residents within the defined zone and to engage in real estate transactions within and outside of the defined geographic area.

Susquehanna River Basin Commission

Notice of Actions Taken at June 12, 2008 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on June 12, 2008 in Elmira, New York, the Commission: 1) heard a special infrastructure presentation by Ms. Sandra Allen of the N.Y. Department of Environmental Conservation, 2) received a report on the present hydrologic conditions of the basin showing a drying trend in parts of the basin, 3) approved a phased-in proposal to increase the Commission's consumptive use mitigation fee, 4) rescinded certain unneeded Commission policies, 5) adopted the FY-10 Budget, 6) approved two contracts, and 7) elected a new Chairman (Robert M. Summers of Maryland) and Vice-Chairman (Brig. Gen. Todd Semonite) to serve in the next fiscal year.

In addition, the Commission heard a Legal Counsel's report, heard an update on recent activities in the regulatory program, and convened a public hearing to: 1) approve certain water resources projects, including one enforcement action; 2) consider a request for a hearing on an administrative appeal regarding Docket No. 20080305, Mountainview Thoroughbred Racing Association, Inc.; 3) consider a request to reopen Docket No. 20020809, Mountainview Thoroughbred Racing Association, Inc.; and 4) consider a request by Mountainview Thoroughbred Racing Association, Inc. for reconsideration of a denial of a request for stay. Eight water resources projects were also tabled. See the Supplementary Information section below for more details on these actions.

DATE: June 12, 2008.

ADDRESS: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423; ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238-0422, ext. 301; fax: (717) 238-2436; e-mail: ddickey@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: The Commission approved a contract for staff consulting work with Indiana County Conservation District on the Bear Run AMD Restoration Project in Banks Township, Indiana County, Pa., and another contract with the U.S. Army Corps of Engineers for work related to the establishment of ecological flow needs in critical stream reaches of the Susquehanna River Basin.

The Commission also convened a public hearing and took the following actions: Public Hearing - Projects Approved:

1. Project Sponsor and Facility: Fortuna Energy Inc. (Southern Tier of N.Y., and Tioga and Bradford Counties, Pa.). Consumptive water use of up to 3,000 mgd in Steuben, Chemung, Schuylers, Tioga, and Broome Counties, N.Y., and Tioga and Bradford Counties, Pa.

2. Project Sponsor and Facility: Fortuna Energy Inc. (Catawgonk Creek), Town of Spencer, Tioga County, N.Y. Surface water withdrawal of up to 0.101 mgd.

3. Project Sponsor and Facility: East Resources, Inc. (Elmira, N.Y., Area). Consumptive water use of up to 4,000 mgd in Chemung and Steuben Counties, N.Y., and Tioga County, Pa.

4. Project Sponsor and Facility: East Resources, Inc. (Chemung River), Town of Big Flats, Chemung County, N.Y. Surface water withdrawal of up to 0.107 mgd.

5. Project Sponsor and Facility: Fortuna Energy Inc. (Chemung River), Chemung Town, Chemung County, N.Y. Surface water withdrawal of up to 0.250 mgd.

6. Project Sponsor and Facility: East Resources, Inc. (Tioga River; at Tioga Junction), Lawrence Township, Tioga County, Pa. Surface water withdrawal of up to 0.107 mgd.

7. Project Sponsor and Facility: East Resources, Inc. (Mansfield, Pa., Area). Consumptive water use of up to 4,000 mgd in Tioga and Bradford Counties, Pa.

8. Project Sponsor and Facility: East Resources, Inc. (Tioga River; near Mansfield), Richmond Township, Tioga County, Pa. Surface water withdrawal of up to 0.107 mgd.

9. Project Sponsor and Facility: Keystone Landfill, Inc., Dunmore Borough, Lackawanna County, Pa. Consumptive water use of up to 0.100 mgd and groundwater withdrawal of 0.010 mgd from Well 1, 0.020 mgd from Well 2, and 0.020 mgd from Well 3, and settlement of an outstanding compliance matter.

10. Project Sponsor: Kratzer Run Development, LLC. Project Facility: Eagles Ridge Golf Club (formerly Grandview Golf Course/Susquehanna Recreation Corporation), Ferguson Township, Clearfield County, Pa. Consumptive water use of up to 0.099 mgd and surface water withdrawal of up to 0.099 mgd.

11. Project Sponsor and Facility: Commonwealth Environmental Systems, L.P., Foster, Frailey and Reily Townships, Schuylkill County, Pa. Modification of consumptive water use and groundwater approval (Docket No. 20070304).

12. Project Sponsor and Facility: Lykens Valley Golf Course (formerly Harrisburg North Golf Course), Upper Paxton Township, Dauphin County, Pa. Consumptive water use of up to 0.200 mgd and surface water withdrawal of up to 0.200 mgd.

13. Project Sponsor and Facility: Spring Creek Golf Course (Spring Creek), Derry Township, Dauphin County, Pa. Consumptive water use of up to 0.081 mgd and surface water withdrawal of up to 0.081 mgd.

14. Project Sponsor: Titanium Hearth Technologies, Inc. Project Facility: TIMET North American Operations, Caernarvon Township, Berks County, Pa. Consumptive water use of up to 0.133 mgd, and settlement of an outstanding compliance matter.

15. Project Sponsor and Facility: Conestoga Country Club (Well 1), Manor and Lancaster Townships, Lancaster County, Pa. Groundwater withdrawal of 0.281 mgd.

16. Project Sponsor and Facility: Rock Springs Generation Facility, Rising Sun, Cecil County, Maryland. Modification of surface water withdrawal, groundwater withdrawal, and consumptive water use approval (Docket No. 20001203).

Public Hearing - Enforcement Action:

The Commission accepted a settlement offer in the amount of \$8,500 for the following project.

Project Sponsor and Facility: Standing Stone Golf Club (Docket No. 20020612), Oneida Township, Huntington County, Pa.

Public Hearing - Denial of Request for Administrative Hearing:

Under Section 808.2 of the Commission's Regulation relating to administrative appeals, the Commission denied a request for an administrative hearing concerning the following project:

Project Sponsor: Mountainview Thoroughbred Racing Association; Project Facility: Withdrawal of up to 0.400 mgd (30-day average) for maintenance and operation of a horse racing and casino gaming facility, Docket No. 20080305; Location: East Hanover Township, Dauphin County, Pa. Appellant: East Hanover Township, et. al.

Public Hearing - Denial of Request to Reopen Docket

Under Section 806.32 of the Commission's Regulation relating to reopening of project approvals, the Commission denied a request for the reopening of the following project approval:

Project Sponsor: Mountainview Thoroughbred Racing Association Project Facility:

Consumptive Use of up to 0.438 mgd (peak day) for maintenance and operation of a horse racing and casino gaming facility, Docket No. 20020809; Location: East Hanover Township, Dauphin County, Pa. Appellant: East Hanover Township.

Public Hearing - Denial of Request for Reconsideration of Denial of Request for Stay

Under Section 808.2 of the Commission's Regulation relating to administrative appeals, the Commission denied a request for reconsideration of its previous denial of a request for stay of the following project approval:

Project Sponsor: Mountainview Thoroughbred Racing Association; Project Facility:

Withdrawal of up to 0.400 mgd (30-day average) for maintenance and operation of a horse racing and casino gaming facility, Docket No.

20080305; Location: East Hanover Township, Dauphin County, Pa. Appellant: East Hanover Township, et. al.

Public Hearing - Projects Tabled:

1. Project Sponsor and Facility: East Resources, Inc. (Seeley Creek), Town of Southport, Chemung County, N.Y. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

2. Project Sponsor and Facility: East Resources, Inc. (Crooked Creek; near Middlebury Center), Middlebury Township, Tioga County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

3. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

4. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

5. Project Sponsor and Facility: Fortuna Energy Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

6. Project Sponsor and Facility: Neptune Industries, Inc. (Lackawanna River), Borough of Archbald, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

7. Project Sponsor: United States Gypsum Company. Project Facility: Washingtonville Plant (Well W-A8), Derry Township, Montour County, Pa. Application for groundwater withdrawal of 0.350 mgd.

8. Project Sponsor: Pennsy Supply, Inc. Project Facility: Hummelstown Quarry, South Hanover Township, Dauphin County, Pa. Application for surface water withdrawal of up to 29.925 mgd.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: July 10, 2008.

Thomas W. Beauduy,
Deputy Director

Department of Transportation

NOTICE OF EXPIRATION

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

Access of Overdimensional/Overweight Vehicles on the Thruway

I.D. No.	Proposed	Expiration Date
TRN-29-07-00019-P	July 18, 2007	July 17, 2008