

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Patient Rights

I.D. No. ASA-08-08-00009-P

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

Proposed action: Addition of Part 815 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), (e), 19.09(b), 22.07(c), 32.01 and 32.07(a)

Subject: Patient rights.

Purpose: To require chemical dependency programs to establish, explain, and post patient rights and responsibilities.

Substance of proposed rule (Full text is posted at the following State website: www.oasas.state.ny.us): The Patient Rights regulation establishes criteria for communicating the rights and responsibilities of patients and staff members in alcoholism and substance abuse treatment facilities. The purpose of the regulation is to establish guidelines for providers to create a patient handbook and bill of rights that sets out all of the expectations of treatment. Each facility will create a document that sets forth all of the information relevant to their program which will tell patients what is expected of them and what they can expect from treatment.

Part 815 Patient Rights establishes the standards for communicating the rights and responsibilities of providers and patients in relation to alcohol and substance abuse treatment. All treatment providers shall establish and post a patient bill of rights. This patient bill of rights shall be communicated to the patient in a language or form that will ensure understanding, and shall include information about how to file a complaint or grievance. The document and posting shall include information on how the patient can contact the Office of Alcoholism and Substance Abuse Services.

The patient bill of rights established by treatment providers shall address confidentiality, handling of personal property, and handling of communications with the judicial system and the child welfare system. It shall also include information about treatment planning, services, referrals, and medical planning/ treatment, expectations of behavior while a patient, expectations of staff behavior, discharge criteria, and discharge planning. The patient rights document shall also address issues of religious practice, communication, visiting, payment, drug testing, and policies on restraint and seclusion. The patient rights document shall be created by each provider to include all of the areas required by this regulation, and shall be posted in their facility as well as given to each patient upon admission to their program.

Text of proposed rule and any required statements and analyses may be obtained from: Patricia Flaherty, Office of Alcoholism and Substance Abuse, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, e-mail: Patricia.Flaherty@oasas.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (“the Commissioner”) to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 19.21(b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

Section 19.21(d) of the Mental Hygiene Law requires the commissioner to promulgate regulations which establish criteria to assess alcoholism, substance abuse, and chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

Section 22.03 of the Mental Hygiene Law requires the Director of any chemical dependency program to establish, communicate and post patient rights, to include information about how to communicate with the Office and the Commissioner.

Section 22.07 of the Mental Hygiene Law authorizes the Commissioner to adopt rules and regulations and take any other necessary action to insure that the rights of individuals who have received or are receiving chemical dependence services are protected.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner the power to adopt regulations to effectuate the provisions and purposes of Article 32.

The relevant sections of the Mental Hygiene Law cited above, allow the Commissioner to regulate how alcoholism and chemical dependency services are administered. This regulation will alter the way those services are administered, in that, each provider will be required to establish policy and procedures in regard to patients rights. The objective is in line with the legislative intent behind the enactment of Sections 19, 22 and 32 of the Mental Hygiene Law, allowing the Commissioner to certify, inspect, license and establish treatment standards for all facilities that treat alcoholism and chemical dependency. The enactment of section 22.03 of the Mental Hygiene in 1999 established that the Office was required to notify patients of their rights in a specific way, *i.e.*: posting them, giving them a written copy, and making sure they are communicated to patients in a form understandable by the patient. Establishing policy and procedures with regard to patient rights, will be a rule that establishes a standard for all facilities which is in the best interest of the client providing better health care and a stronger basis of recovery from addiction.

2. Legislative Objectives:

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The legislature enacted section 19 enabling the Commissioner to establish best practices for treating chemical dependency. Additionally section 22.03 enables the Office to require treatment providers to establish a patient rights document including information about communicating with the Commissioner and the director. Establishing a rule which requires treatment providers to create a policy and procedure for patient rights and clearly delineates the patient's rights and responsibilities in the treatment environment is a best clinical practice which will only enhance the treatment experience.

3. Needs and Benefits:

Best clinical practice for chemically dependent people indicates that clearly defined rights and responsibilities aid in treatment in that patients will know what to expect from treatment providers. Patient rights documents are already being used by treatment providers and are promoted within our treatment community. Mental Hygiene Law section 22.03 requires the Director of any chemical dependency program to establish, communicate and post patient rights, to include information about how to communicate with the Office and the Commissioner. This regulation will mandate that all providers of chemical dependency services become compliant with the statutory requirement. The purpose of the regulation is to establish guidelines for providers to create a patient handbook and bill of rights that sets out all of the expectations of treatment, information relevant to their program, and what is expected of their clients. Each facility/provider shall post notice of the patient bill of rights and a summary of the rights to include information about how to contact the Office of Alcoholism and Substance Abuse Services (OASAS) and the Director of the service in order to assure that every patient is informed of their rights. The patient bill of rights established by treatment providers shall address confidentiality, handling of personal property, and handling of communications with the judicial system and the child welfare system. It shall also include information about treatment planning, services, referrals, and medical planning/ treatment, expectations of behavior while a patient, expectations of staff behavior, discharge criteria, and discharge planning. The patient rights document shall also address issues of religious practice, communication, visiting, payment, drug testing, and policies on restraint and seclusion.

4. Costs:

Any costs incurred by providers will be minimal, consisting of additional paper and printing materials, and are necessary to establish clear treatment boundaries between providers and patients.

a. Costs to regulated parties: Costs for materials will be minimal.

b. Costs to the agency, state and local governments: There will be no additional costs to counties, cities, towns or local districts.

5. Local Government Mandates:

There are no new mandates or administrative requirements placed on local governments.

6. Paperwork:

Part 815 will require some paperwork for certified and or funded providers in order to ensure that utilization review requirements are met. However, since utilization control is presently required and providers are

already familiar with utilization control record keeping, it is not expected that new record keeping requirements will be excessive.

7. Duplication:

There is no duplication of other state or federal requirements.

8. Alternatives:

The only alternative is to establish a set policy and procedure at the agency level and impose this on the providers. This alternative was explored and it was decided that each provider is in a unique situation and should establish policy and procedure that are in tune with the special needs and environment for which their patients are situated to. The Alcoholism and Substance Abuse Providers (ASAP) of NYS distributed this proposed regulation to all of its members and requested comment. The comments received were addressed and some changes were made. For example, the section on drug testing was changed to reflect each providers right to require, or not, "supervised" drug testing. Additionally, these regulations were also sent to the Council of Local Mental Hygiene Directors, Greater New York Hospital Association, the Committee on Methadone Program Administrators, Inc., and Outreach Development Corp., for comment.

9. Federal Standards:

There are no specific federal standards or regulations that apply to this amendment.

10. Compliance Schedule:

It is expected that full implementation of Part 815 will be completed within nine months of the adoption of the regulation.

Regulatory Flexibility Analysis

Effect of the Rule: The proposed amendments to Part 815 will impact certified and or funded providers. It is expected that the development of a Patient Rights policy and procedure manual will not only result in better patient care but more effective programs. Most providers already have some form of policy and procedure regarding patient rights. This rule will require uniform compliance by all certified or funded providers.

Compliance Requirements: It is not expected that there will be significant changes in compliance requirements. Since providers are already required to provide utilization review, it is not expected that this regulation, will have significant additional costs.

Professional Services: it is not expected that programs will need to utilize additional professional services.

Compliance Costs: Minimal costs for printed material are expected.

Economic and Technological Feasibility: Compliance with Part 815 is not expected to have an economic impact or require any changes to technology for small businesses and government.

Minimizing Adverse Impact: Part 815 has been carefully reviewed to ensure minimum adverse impact to providers. The Alcoholism and Substance Abuse Providers of NYS, Inc., were briefed on this proposal, and they were provided with the ability to comment as a part of the process of developing this rule. Any impact this rule may have on small businesses and the administration of State or local governments, will either be a positive impact or the minimal costs for materials and compliance are so small that they will be absorbed into the already existing economic structure.

Small Business and Local Government Participation: These amendments were shared with New York's treatment provider community including, Alcoholism and Substance Abuse Providers of NYS, Inc. In addition the Council of Local Mental Hygiene Directors, the Greater New York Hospital Association, The Healthcare Association of New York, and the Committee on Methadone Program Administrators, Inc, as well as the Legal Action Center.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Certified providers of services that will be impacted by the amendments to Part 815 are located in rural as well as suburban and metropolitan areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There will be no new reporting requirements that will impact rural providers.

3. Costs: There will be minimum impact for rural providers. Any additional costs for print materials will be minimal.

4. Minimizing adverse impact: It is not expected that there will be any adverse impact to rural areas.

5. Rural area participation: These amendments were shared with New York's treatment provider community and included a cross-section of upstate and downstate, as well as urban and rural programs.

Job Impact Statement

The expectations contained in Part 815 are being accomplished by the majority of treatment providers pursuant to their own internal policy and

procedures and will not have a significant impact on the job duties of treatment providers. The requirement relating to drug testing may require additional staff, however existing funding reimburses staffing ratios at a sufficient level to reimburse any additional staffing costs.

Office of Children and Family Services

NOTICE OF ADOPTION

Market Rates for Subsidized Child Care

I.D. No. CFS-43-07-00012-A

Filing No. 101

Filing date: Feb. 1, 2008

Effective date: Feb. 20, 2008

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

Action taken: Amendment of section 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410 and 410-x(4)

Subject: Market rates for subsidized child care.

Purpose: To update the market rates social services districts can pay for subsidized child care.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-43-07-00012-P, Issue of October 24, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING HEARING(S) SCHEDULED

State Education Programs and Services

I.D. No. EDU-08-08-00013-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 177.1, 200.1, 200.3-200.7, 200.16 and 201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 3208(1)-(5), 3214(3), 3602-c, 3713(1) and (2), 4002(1)-(3), 4308(3), 4355(3), 4401(1)-(11), 4402(1)-(7), 4403(3), 4404(1)-(5), 4404-a(1)-(7) and 4410(13)

Subject: Special education programs and services.

Purpose: To conform the commissioner's regulations to ch. 378 of the Laws of 2007, the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 *et. seq.*), as amended by Public Law 108-446, and the final amendments to 34 CFR part 300; ensure that chairpersons of committees on special education are appropriately qualified; and establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services.

Public hearing(s) will be held at: 2:00 p.m.-5:00 p.m., March 26, 2008 at Manhattan VESID District Office, 116 W. 32nd St., 5th Fl. Conference Rm., New York, NY (conducted by video teleconference with an Albany site); 2:00 p.m.-5:00 p.m., April 2, 2008 at State Education Department, Education Bldg., Seminar Rm. 5A/B, Albany, NY; 2:00 p.m.-5:00 p.m.,

April 2, 2008 at Senator Hughes Office Bldg., VESID District Office, 333 E. Washington St., 2nd Fl., Syracuse, NY (conducted by video teleconference with an Albany site).*

*Additional information on the public hearings may be found at: www.vesid.nysed.gov/specialed/idea/home.html

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

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

Substance of proposed rule (Full text is posted at the following State website: www.vesid.nysed.gov/specialed/idea/home.html) The Commissioner of Education proposes to amend sections 177.1, 200.1, 200.3 through 200.7, 200.16 and 201.11 of the Commissioner's Regulations, effective July 1, 2008, relating to the provision of special education to students with disabilities. The following is a summary of the substance of the proposed amendments.

Section 177.1, as amended, requires the parent of a student parentally placed in a nonpublic school to request services from the school district responsible for providing such services in accordance with section 3602-c(2) of the Education Law.

Section 200.1, as amended, revises the definitions of related services, school health services and transition services.

Section 200.3, as amended, adds that the representative of the school district must serve as the chairperson of a committee on special education (CSE) or subcommittee; requires for a child in transition from early intervention (EI) programs and services that the school district, at the request of the parent, invite an appropriate professional designated by the agency charged with the responsibility for the preschool child to participate in a committee on preschool special education meeting (CPSE) meeting; and adds procedures for a parent and school district to agree that the attendance of a member of the committee is not necessary or that a member may be excused consistent with the applicable procedures established in New York State (NYS) Education Law.

Section 200.4, as amended, makes technical amendments relating to educationally related support services and written notice upon graduation or aging out; establishes procedures for referrals and requests for referrals for an initial evaluation of a student for special education services, written agreements between a parent and school district that a reevaluation is unnecessary, and amendments to individualized education programs (IEPs) after the annual review has been conducted; and adds that agreements between the parent and school district to extend the individual evaluation timeline for transfer students or students suspected of having a learning disability be in writing.

Section 200.5, as amended, makes technical amendments; adds that the meeting notice inform parents of a child previously served under EI of their right to request that an invitation to the initial CPSE meeting be sent to the EI coordinator or other representatives of the EI system to assist in the smooth transition of services; and repeals the provision providing that parties to the mediation may be required to sign a confidentiality pledge prior to the commencement of the process.

Section 200.6, as amended, makes a technical amendment.

Section 200.7, as amended, adds procedures for a parent and the Department to agree that the attendance of a member of the multidisciplinary team is not necessary or that a member may be excused consistent with the applicable procedures established in NYS Education Law.

Section 200.16, as amended, conforms State regulations to Education Law and to amended section 200.4(a) relating to individuals authorized to make a referral of a preschool student suspected of having a disability; and conforms State regulations to Education Law relating to the timeline for the provision of services to preschool students with disabilities.

Section 201.11, as amended, makes a technical amendment relating to expedited due process hearing procedures.

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

Education Law section 4401-a establishes procedures for the referral and evaluation of students suspected of having a disability for special education services or programs. Section 4401-a(4) provides that the individual evaluation of the educational needs of a student referred to a committee on special education shall be conducted by qualified individuals, in accordance with regulations of the Commissioner.

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

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

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

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

Education Law section 4410 outlines special education services and programs for preschool children with disabilities. Section 4410(13) authorizes Commissioner to adopt regulations.

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

The amendments are necessary to conform the Commissioner's Regulations to Chapter 378 of the New York State Laws of 2007, which became effective June 30, 2007, and the federal Individuals with Disabilities Education Act (IDEA) statutes and regulations (20 U.S.C. 1400 *et seq.*, as amended by Public Law 108-446 and the final federal amendments to 34 CFR Part 300 to implement IDEA). The amendments are also necessary to ensure that chairpersons of a committee on special education are appropriately qualified and establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services.

COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to regulated parties: None.
- d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in NYS Education Law and IDEA statutes and regulations; to ensure that chairpersons of committees on special education are appropriately qualified; and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services, and do not impose any additional costs beyond those imposed by federal and State statutes and regulations.

LOCAL GOVERNMENT MANDATES:

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

Section 177.1 requires the parent of a student parentally placed in a nonpublic school to request services from the school district responsible

for providing such services in accordance with section 3602-c(2) of the Education Law.

Section 200.1 revises the definitions of related services, school health services and transition services.

Section 200.3 adds that the representative of the school district must serve as the chairperson of a committee on special education (CSE) or subcommittee; requires for a child in transition from early intervention (EI) programs and services that the school district, at the request of the parent, invite an appropriate professional designated by the agency charged with the responsibility for the preschool child to participate in a committee on preschool special education (CPSE) meeting; and adds procedures for a parent and school district to agree that the attendance of a member of the committee is not necessary or that a member may be excused consistent with the applicable procedures established in NYS Education Law.

Section 200.4 establishes procedures for referrals and requests for referrals for an initial evaluation of a student for special education services, written agreements between a parent and school district that a reevaluation is unnecessary, and changes to individualized education programs (IEPs) without a meeting after the annual review has been conducted; and adds that agreements between the parent and school district to extend the individual evaluation timeline for transfer students or students suspected of having a learning disability be in writing.

Section 200.5 adds that the meeting notice inform parents of a child previously served under EI of their right to request that an invitation to the initial CPSE meeting be sent to the EI coordinator or other representatives of the EI system to assist in the smooth transition of services; and repeals the provision providing that parties to a mediation session may be required to sign a confidentiality pledge prior to the commencement of the process.

Section 200.7 adds procedures for a parent and the Department to agree that the attendance of a member of the multidisciplinary team is not necessary or that a member may be excused consistent with the applicable procedures established in NYS Education Law.

Section 200.16 conforms State regulations to Education Law and to amended section 200.4(a) relating to individuals authorized to make a referral of a preschool student suspected of having a disability; and conforms State regulations to Education Law relating to the timeline for the provision of services to preschool students with disabilities.

PAPERWORK:

Consistent with statutory requirements, the proposed rule would require that written agreements and parent notification relating to attendance of CSE or CPSE members, reevaluations and changes to the IEP without a meeting be in writing. Changes also require that parent and school district agreements to extend the individual evaluation timeline for transfer students or students suspected of having a learning disability be in writing.

DUPLICATION:

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

ALTERNATIVES:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in State statute and the federal IDEA statutes and regulations and to that extent there were no significant alternatives and none were considered. Regarding procedures for request for referrals for an initial evaluation, the Department considered various timelines and procedures to ensure timely action when a student is suspected of having a disability, and determined that the proposed amendment would best ensure the educational interests of students with disabilities, consistent with federal law and regulations.

FEDERAL STANDARDS:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 378 of the Laws of 2007) and the federal IDEA statutes and regulations (20 U.S.C. 1400 *et seq.*, as amended by Public Law 108-446 and the final federal amendments to 34 CFR Part 300) and, to that extent, do not exceed any minimum federal standards. The amendments relating to the chairperson of the committee and requests for referral are not required by federal law or regulations, but are necessary to ensure that chairpersons of committees on special education are appropriately qualified and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services, and are otherwise consistent with federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendments are necessary in order to ensure compliance with State law and federal law and regulations relating to the education of students with disabilities, ages 3-21; to ensure that chairpersons of a committee on special education are appropriately qualified; and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services, and do not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:**EFFECT OF RULE:**

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

COMPLIANCE REQUIREMENTS:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 378 of the Laws of 2007), which became effective June 30, 2007, and the federal IDEA statutes and regulations (20 U.S.C. 1400 *et. seq.*, as amended by Public Law 108-446 and the final federal amendments to 34 CFR Part 300) and do not impose any additional compliance requirements upon local governments beyond those imposed by federal statutes and regulations. The amendments relating to the chairperson of the committee and requests for referral are not required by federal law or regulations, but are necessary to ensure that chairpersons of committees on special education are appropriately qualified and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services, and are otherwise consistent with federal standards.

Section 177.1 requires the parent of a student parentally placed in a nonpublic school to request services from the school district responsible for providing such services in accordance with section 3602-c(2) of the Education Law.

Section 200.1 revises the definitions of related services, school health services and transition services.

Section 200.3 adds that the representative of the school district must serve as the chairperson of a committee on special education (CSE) or subcommittee; requires for a child in transition from early intervention (EI) programs and services that the school district, at the request of the parent, invite an appropriate professional designated by the agency charged with the responsibility for the preschool child to participate in a committee on preschool special education (CPSE) meeting; and adds procedures for a parent and school district to agree that the attendance of a member of the committee is not necessary or that a member may be excused consistent with the applicable procedures established in New York State (NYS) Education Law.

Section 200.4 establishes procedures for referrals and requests for referrals for an initial evaluation of a student for special education services, written agreements between a parent and school district that a reevaluation is unnecessary, and changes to individualized education programs (IEPs) without a meeting after the annual review has been conducted; and adds that agreements between the parent and school district to extend the individual evaluation timeline for transfer students or students suspected of having a learning disability be in writing.

Section 200.5 adds that the meeting notice inform parents of a child previously served under EI of their right to request that an invitation to the initial CPSE meeting be sent to the EI coordinator or other representatives of the EI system to assist in the smooth transition of services; and repeals the provision providing that parties to a mediation session may be required to sign a confidentiality pledge prior to the commencement of the process.

Section 200.7 adds procedures for a parent and the Department to agree that the attendance of a member of the multidisciplinary team is not necessary or that a member may be excused consistent with the applicable procedures established in NYS Education Law.

Section 200.16 conforms State regulations to Education Law and to amended section 200.4(a) relating to individuals authorized to make a referral of a preschool student suspected of having a disability; and conforms State regulations to Education Law relating to the timeline for the provision of services to preschool students with disabilities.

Consistent with statutory requirements, the proposed rule would require that written agreements and parent notification relating to attendance

of CSE or CPSE members, reevaluations and changes to the IEP without a meeting be in writing. Changes also require that parent and school district agreements to extend the individual evaluation timeline for transfer students or students suspected of having a learning disability be in writing.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in NYS Education Law and IDEA statutes and regulations; ensure that chairpersons of committees on special education are appropriately qualified; and establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services. School districts and other local educational agencies (LEAs) are required to comply with the IDEA as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 378 of the Laws of 2007) and the federal IDEA statutes and regulations (20 U.S.C. 1400 *et. seq.*, as amended by Public Law 108-446 and the final federal amendments to 34 CFR Part 300) and, to that extent, do not exceed any minimum federal standards. The amendments relating to the chairperson of the committee and requests for referral are not required by federal law or regulations, but are necessary to ensure that chairpersons of committees on special education are appropriately qualified and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services, and are otherwise consistent with federal standards.

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

LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendments have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. The State Education Department will be conducting public hearings on the proposed amendments on March 26 and April 2, 2008.

Rural Area Flexibility Analysis**TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

The proposed amendments will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 378 of the Laws of 2007), which became effective June 30, 2007, and the federal IDEA statutes and regulations (20 U.S.C. 1400 *et. seq.*, as amended by Public Law 108-446 and the final federal amendments to 34 CFR Part 300), and do not impose any additional compliance requirements upon rural areas beyond those imposed by federal statutes and regulations.

The amendments relating to the chairperson of the committee and requests for referral are not required by federal law or regulations, but are necessary to ensure that chairpersons of committees on special education are appropriately qualified and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services, and are otherwise consistent with federal standards.

Section 177.1 requires the parent of a student parentally placed in a nonpublic school to request services from the school district responsible for providing such services in accordance with section 3602-c(2) of the Education Law.

Section 200.1 revises the definitions of related services, school health services and transition services.

Section 200.3 adds that the representative of the school district must serve as the chairperson of a committee on special education (CSE) or subcommittee; requires for a child in transition from early intervention (EI) programs and services that the school district, at the request of the parent, invite an appropriate professional designated by the agency charged with the responsibility for the preschool child to participate in a committee on preschool special education (CPSE) meeting; and adds procedures for a parent and school district to agree that the attendance of a member of the committee is not necessary or that a member may be excused consistent with the applicable procedures established in New York State (NYS) Education Law.

Section 200.4 establishes procedures for referrals and requests for referrals for an initial evaluation of a student for special education services, written agreements between a parent and school district that a reevaluation is unnecessary, and changes to individualized education programs (IEPs) without a meeting after the annual review has been conducted; and adds that agreements between the parent and school district to extend the individual evaluation timeline for transfer students or students suspected of having a learning disability be in writing.

Section 200.5 adds that the meeting notice inform parents of a child previously served under EI of their right to request that an invitation to the initial CPSE meeting be sent to the EI coordinator or other representatives of the EI system to assist in the smooth transition of services; and repeals the provision providing that parties to a mediation session may be required to sign a confidentiality pledge prior to the commencement of the process.

Section 200.7 adds procedures for a parent and the Department to agree that the attendance of a member of the multidisciplinary team is not necessary or that a member may be excused consistent with the applicable procedures established in NYS Education Law.

Section 200.16 conforms State regulations to Education Law and to amended section 200.4(a) relating to individuals authorized to make a referral of a preschool student suspected of having a disability; and conforms State regulations to Education Law relating to the timeline for the provision of services to preschool students with disabilities.

Consistent with statutory requirements, the proposed rule would require that written agreements and parent notification relating to attendance of CSE or CPSE members, reevaluations and changes to the IEP without a meeting be in writing. Changes also require that parent and school district agreements to extend the individual evaluation timeline for transfer students or students suspected of having a learning disability be in writing.

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

COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in NYS Education Law and IDEA statutes and regulations; to ensure that chairpersons of committees on special education are appropriately qualified; and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services. School districts and other local educational agencies (LEAs) are required to comply with the IDEA as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

MINIMIZING ADVERSE IMPACT:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 378 of the Laws of 2007) and the federal IDEA statutes and regulations (20 U.S.C. 1400 et. seq., as amended by Public Law 108-446 and the final federal amendments to 34 CFR Part 300) and, to that extent, do not exceed any minimum federal standards. The amendments relating to the chairperson of the committee and requests for referral are not required by federal law or regulations, but are necessary to ensure that chairpersons of committees on special education are appropriately qualified and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services, and are otherwise consistent with federal standards.

School districts and other LEAs are required to comply with IDEA as a condition to their receipt of federal funding. The proposed conforming

amendments have been carefully drafted to meet federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department's Rural Education Advisory Committee that includes representatives of school districts in rural areas. The State Education Department will be conducting public hearings on the proposed amendments on March 26 and April 2, 2008.

Job Impact Statement

The proposed rule is necessary in order to ensure compliance with federal law and regulations and State law relating to the education of students with disabilities, ages 3-21; to ensure that chairpersons of committees on special education are appropriately qualified; and to establish procedures when a district receives a request for referral of a student for an initial evaluation for special education services. The proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational Harvest and Possession of Tautog

I.D. No. ENV-08-08-00003-EP

Filing No. 95

Filing date: Jan. 31, 2008

Effective date: Jan. 31, 2008

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 13-0105 and 13-0340-d

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

Specific reasons underlying the finding of necessity: The Department is adopting an amendment to 6 NYCRR Part 40 which will implement a reduction in the recreational possession limit and in the number of days in the fishing season for tautog. These regulations are necessary in order for New York to maintain compliance with the Fishery Management Plan (FMP) for Tautog as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to § 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission (ASMFC). The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promul-

gates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

In addition to federal requirements, Environmental Conservation Law Section 13-0340-d, which authorizes the Department to adopt regulations for the management of tautog, provides that such regulations must be consistent with the fishery management plans for tautog adopted by ASMFC and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6% reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1st through May 30th, to a two-part season running from October 1st through December 20th and from January 17th through April 30th.

Failure by New York to adopt these amendments could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a tautog fishery closure - a complete ban on fishing for tautog in New York. The promulgation of this regulation on an emergency basis is necessary in order for the Department to meet compliance deadlines and avoid closure of the tautog fishery and the economic hardship that would be associated with such closure.

Subject: Recreational harvest and possession of tautog.

Purpose: To control recreational harvest of tautog consistent with the fishery management plan.

Text of emergency/proposed rule: Section 40.1 (f) is amended to read as follows:

(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	Licensed Party/ Charter Boat anglers	2
		28" TL	
		All other anglers	1
		28" to 40" TL	
		>40" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct. 1 - [May 31] Dec. 20 and Jan. 17 - Apr. 30	14" TL	[10] 4
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	19" TL	No limit
Atlantic cod	All year	22" TL	No limit
Summer flounder	None (closed as of September 17, 2007)		
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	17" TL	No limit
Weakfish	All year	11" tail length #	
		16" TL	6
Bluefish	All year	10" Fillet length+ 12" Dressed length**	
		No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	15, no more than 10 of which shall be less than 12" TL.
Winter Flounder	April 1 - May 30	12" TL	10
Scup (porgy)	Sept. 1 - Oct. 31	10.5" TL	25
licensed Party/ Charter Boat anglers	June 1 - Aug. 31	10.5" TL	60

Scup (porgy)	June 1 - Oct. 31	10.5" TL	25
All other anglers			
Black Sea Bass	All year	12" TL	25

American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum size limit	5
Oyster toadfish	Jan 1 - May 14 and July 16 - Dec 31	10" TL	3
Large & Small Coastal Sharks	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
###, ###			
Pelagic Sharks	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
++, ###			
Prohibited Sharks***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

++ Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

*** Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999, and as amended in volume 68, Number 247, pages 74746-74789, December 24, 2003. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, New York, 11733.

**** See Special Regulations contained in 6NYCRR 40.1(h)(3).

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 29, 2008.

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, Department of Environmental Conservation, 205 N. Belle Meade Road, Suite 1, East Setauket, NY 11733-3400, (631) 444-0435, e-mail: swheins@gw.dec.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.

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Sections 3-0301, 13-0105 and 13-0340-d authorize the Department of Environmental Conservation (DEC or Department) to establish, by regulation, the open season, size and catch limits, possession and sale restrictions, and manner of taking for tautog.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters, consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

3. Needs and benefits:

The Department is adopting amendments to 6 NYCRR Part 40 which will implement a reduction in the possession limit and shortening of the recreational tautog season. These regulations are necessary in order for New York to maintain compliance with the FMP for Tautog as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to § 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission. The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish are ASMFC's Interstate Fishery Man-

agement Plans for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines that a state is non-compliant with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

In addition to federal requirements, Environmental Conservation Law Section 13-0340-d, which authorizes the Department to adopt regulations for the management of tautog, provides that such regulations must be consistent with the fishery management plans for tautog adopted by ASMFC and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6% reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1st through May 30th, to a two-part season running from October 1st through December 20th and from January 17th through April 30th.

Failure by New York to adopt these amendments could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a tautog fishery closure - a complete ban on fishing for tautog in New York. The promulgation of this regulation on an emergency basis is necessary in order for the Department to meet compliance deadlines and avoid closure of the tautog fishery and the economic hardship that would be associated with such closure.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

Certain regulated parties (party/charter vessels, bait and tackle shops) may experience some adverse economic effects due to the loss of several days in the fishing season. Some charter operations may have already booked fishing trips for tautog in the time frame affected by the season closure. Some bait and tackle shops may have ordered and purchased bait, and bait dealers may have done the same. There may be some economic loss to these businesses. It is also possible that the reduction of the bag limit from 10 to 4 may result in fewer angler trips for tautog, which has the potential to negatively affect the number of angler trips taken aboard party and charter boats.

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

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The following significant alternatives have been considered by the Department and rejected for the reasons set forth below:

(1) Reduce exploitation in the commercial fishery at the same rate as the recreational fishery. Addendum IV to the tautog FMP specified that reductions taken in the fishery in order to meet the fishing mortality target must come solely from the recreational sector, but Addendum V changed that to allow states to take reductions in the commercial fishery as well. If

New York had chosen this option, the measures imposed on the recreational fishery could have been somewhat less restrictive, as the total reduction in exploitation was spread over both the recreational and commercial fisheries. However, the commercial fishery in New York is currently capped at a 25-fish possession limit, resulting in reported annual landings of 60,000 pounds or less. These landings constitute about 10-12% of the combined recreational and commercial landings. Department staff believe that this level of exploitation is consistent with a sustainable fishery and does not see the need for a reduction in the commercial fishery at this time.

(2) Alternative season closures and bag limit. The Marine Resources Advisory Council (MRAC) provided a recommendation for an open season of October 16th through April 30th and a bag limit of 5 fish, with no reduction in the commercial fishery. The Department is concerned that moving the season opening further into the fall favors the party and charter fishing modes over the private and rental boat and shore fishing modes. The Department would like to maintain the October 1 opening date to avoid this situation. In addition, the 5-fish bag limit was recommended by MRAC because the party and charter industry believe that a lower limit will discourage participation. The Department disagrees, and the 4-fish limit will match that of Connecticut, a state with which New York shares the waters of Long Island Sound.

(3) No Action (no amendment to regulations).

The "no action" alternative would leave current regulations in place and put New York in a position to exceed the fishing mortality target and over-harvest the resource. This result would be contrary to the objectives of the FMP and subject New York to the potential for a determination of non-compliance and a federally imposed closure of the fishery for tautog in New York. For these reasons, this alternative was rejected.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC fishery management plan for tautog.

10. Compliance schedule:

The emergency regulations will take effect immediately upon filing with the Department of State. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via the Department's website.

Regulatory Flexibility Analysis

1. Effect of rule:

These amendments to 6 NYCRR Part 40 reduce the recreational possession limit for tautog and shorten the recreational tautog season. Because this rulemaking addresses recreational fishing, the only businesses that will be directly affected are party and charter boat operations. These regulations do not apply directly to local governments, and will not have any direct effects on local governments.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6% reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1 through May 30, to a two-part season running from October 1 through December 20 and from January 17 through April 30. Failure by New York to adopt these amendments could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a tautog fishery closure - a complete ban on fishing for tautog in New York.

In 2006, there were 503 licensed party/charter vessels operating in New York. The 2007 tautog fishing season was open from January 1 through May 30, and also open from October 1 through December 31 - a total of 243 potential fishing days. This rulemaking sets an open season of January 17 through April 30 and October 1 through December 20, a reduction to 185 potential fishing days. The closures of the fishery means the loss of 58 potential fishing days, though these losses are split between the mid-season closure and the reduction in the spring. A reduction in the number of fishing days for tautog will likely have an adverse effect on the number of fishing trips these businesses make during the tautog fishing season. However, only a small percentage of the party/charter boats typically fish during the January period which will now be closed, so that particular amendment should not affect the majority of the fishery.

In the long term, the maintenance of sustainable fisheries will have a positive effect on small businesses in the fisheries in question, including party and charter boat owners and operators. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks

and an increase in yield from well-managed resources. Protection of the tautog resource is essential to the survival of the party and charter boat operations in these fisheries. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest, and to continue to rebuild or maintain them for future utilization.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the Department to maintain compliance with the FMP for tautog. The regulations are intended to protect the tautog resource and avoid the adverse impacts that would be associated with closure of the fishery for non-compliance with the FMP.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries, as well as wholesale and retail outlets and other support industries for recreational fisheries. Failure to comply with an FMP and take required actions to protect a marine fishery could cause the collapse of the stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being adopted in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

6. Small business and local government participation:

The Department consulted the Marine Resources Advisory Council regarding the proposed action. The Council is comprised of representatives from recreational and commercial fishing interests, including recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, and recreational anglers. The Board voted on the Department's proposed action, and a majority voted to support the Department's proposal in order to comply with the Tautog FMP.

Local governments were not contacted because the rule does not affect them.

7. Economic and technological feasibility:

The proposed regulations do not require any expenditures on the part of affected businesses in order to comply with the changes. The changes required by this action have been determined to be economically feasible for the affected parties.

There is no additional technology required for small businesses, and this action does not apply to local governments. Therefore, there are no economic or technological impacts for any such bodies.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. The tautog fishery directly affected by the emergency rule is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the state. There are no rural areas within the marine and coastal district. Further, the emergency rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas.

Since no rural areas will be affected by the emergency amendments of Part 40, the Department has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

These amendments to 6 NYCRR Part 40 reduce the recreational possession limit for tautog and shorten the recreational tautog season.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6% reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1st through May 30th, to a two-part season running from October 1st through December 20th and from January 17th through April 30th.

This rulemaking addresses recreational fishing. The only jobs or employment opportunities that will be directly affected are those associated

with party and charter boat operations. There were 503 licensed party/charter vessels operating in New York during 2006. Many currently licensed party and charter boat owners and operators hire seasonal employees during the fishing season, the majority of which occurs from May through October, with a peak in the summer months. Reduction in the number of fishing days for tautog will likely have an adverse effect on the number of fishing trips these businesses make during the tautog fishing season. However, because the tautog fishing season will remain open in 2008, although shorter than in 2007, the potential for seasonal employees to lose their jobs on party/charter boats is minimal. Only a small percentage of the party/charter boats fish during the January period which will now be closed. If any seasonal employees should lose their jobs due to these amendments, the number would be relatively small, and would not rise to the level necessary to constitute a significant adverse impact on jobs (equivalent of decrease of 100 full-time annual jobs).

This rulemaking will avoid the potential for closure of the tautog fishery in New York. If the fishery to close, a significantly higher number of jobs could be affected. Thus, the restrictions are in fact an effort to minimize the potential for job loss due to a closure of the fishery. In the long term, the maintenance of sustainable fisheries will have a positive effect on party and charter boat owners and operators. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the tautog resource is essential to the survival of the party and charter boat operations and bait and tackle businesses that support in these fisheries.

Based on the above and Department staff's knowledge and past experience with similar regulations, the Department has concluded that there will not be any substantial adverse impacts on jobs or employment opportunities as a consequence of this rulemaking. Therefore, a job impact statement is not required.

NOTICE OF ADOPTION

Native Reptiles and Amphibians

I.D. No. ENV-29-07-00011-A

Filing No. 107

Filing date: Feb. 5, 2008

Effective date: Feb. 20, 2008

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

Action taken: Repeal of section 2.2 and amendment of Part 3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0103, 11-0303, 11-0311, 11-0903, 11-0905 and 11-0909

Subject: Native reptiles and amphibians.

Purpose: To implement changes to the Environmental Conservation Law that protect native reptiles and amphibians.

Text of final rule: Part 2 of Title 6 NYCRR is amended as follows:

Section 2.2, "Taking of frogs," is repealed.

Part 3 of Title 6 NYCRR is amended as follows:

Part 3 is renamed to read as follows:

"Reptiles and Amphibians"

Section 3.1, "Protection of diamondback terrapin," is renamed to read as follows:

Section 3.1 [Protection of diamondback] *Diamondback* terrapins.

A new section 3.2, "Native turtles," is added to read as follows:

3.2 *Native turtles.*

(a) "Definition." For purposes of this section, "native turtles" shall mean all life stages, including eggs, of the following species: snapping turtle, common musk turtle, eastern mud turtle, spotted turtle, bog or Muhlenberg's turtle, wood turtle, eastern box turtle, common map turtle, painted turtle, Blanding's turtle, green sea turtle, Atlantic hawksbill sea turtle, loggerhead sea turtle, Atlantic or Kemp's ridley sea turtle, leatherback sea turtle, and eastern spiny softshell turtle.

(b) *Snapping turtles.*

(1) "Open season." July 15 to September 30.

(2) "Size limit." Minimum length: 12 inches. No person shall harvest, take or possess a snapping turtle with an upper shell (carapace) that measures, using a straight line, less than twelve inches in length.

(3) "Bag limit." Daily limit: 5. Seasonal limit: 30.

(4) "Hunting hours." Snapping turtles may be hunted at any time.

(c) *All other native turtles.*

(1) "Open season." None.

A new section 3.3, "Native snakes," is added to read as follows:

3.3 Native snakes.

(a) "Definitions." For purposes of this section, "native snakes" shall mean all life stages, including eggs, of the following species: northern water snake, queen snake, northern brown snake, northern redbelly snake, common garter snake, shorthead garter snake, ribbon snake, eastern hog-nose snake, northern ringneck snake, eastern worm snake, northern black racer, smooth green snake, black rat snake, eastern milk snake, northern copperhead, eastern massasauga, and timber rattlesnake.

(b) "Open season." None.

A new section 3.4, "Native lizards," is added to read as follows:

3.4 Native lizards.

(a) "Definitions." For purposes of this section, "native lizards" shall mean all life stages, including eggs, of the following species: northern fence lizard, five-lined skink, and northern coal skink.

(b) "Open season." None.

A new section 3.5, "Native frogs," is added to read as follows:

3.5 Native frogs.

(a) "Definitions." For purposes of this section, "native frogs" shall mean all life stages, including eggs, of the following species: eastern spadefoot toad, eastern American toad, Fowler's toad, northern cricket frog, northern gray treefrog, northern spring peeper, western chorus frog, bullfrog, green frog, mink frog, wood frog, northern leopard frog, southern leopard frog, and pickerel frog.

(b) "Open season." June 15 to September 30 for all wildlife management units, except that:

(i) Leopard frogs shall not be taken in wildlife management units 1A, 1C or 2A.

(ii) Northern cricket frogs and eastern spadefoot toads shall not be taken in any area of the state.

(c) "Size limit." None.

(d) "Bag limit." None.

(e) "Hunting hours." Frogs may be taken at any time, except that no person shall use a gun to take frogs when hunting at night (sunset to sunrise).

A new section 3.6, "Native salamanders," is added to read as follows:

3.6 Native salamanders.

(a) "Definitions." For purposes of this section, "native salamanders" shall mean all life stages, including eggs, of the following species: eastern hellbender, mudpuppy, marbled salamander, Jefferson salamander, blue-spotted salamander, spotted salamander, eastern tiger salamander, red-spotted newt, northern dusky salamander, mountain dusky salamander, redback salamander, northern slimy salamander, Wehrle's salamander, four-toed salamander, northern spring salamander, northern red salamander, northern two-lined salamander, and longtail salamander.

(b) "Open season." None.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 3.2(a), 3.3(a), 3.4(a), 3.5(a) and 3.6(a).

Text of rule and any required statements and analyses may be obtained from: Daniel Rosenblatt, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8919, e-mail: dlrosenb@gw.dec.state.ny.us

Additional matter required by statute: A Programmatic Environmental Impact statement is on file with the Department of Environmental Conservation.

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (Department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL 11-0103 contains definitions, including the definition of small game, which was recently amended to include native amphibians and reptiles. ECL Sections 11-0311, 11-0903, 11-0905 and 11-0909 establish the Department's regulatory authority for setting seasons, bag limits and methods of take for amphibians and reptiles.

2. LEGISLATIVE OBJECTIVES

The legislative objectives behind the statutory provisions listed above was to establish, or authorize the Department to establish by regulation, certain basic wildlife management tools, including the setting of open seasons, and restrictions on methods of take and possession for certain species of wildlife that were previously unprotected. These tools are used by the Department to maintain desirable wildlife species in ecological

balance, while observing sound management practices and providing for public use of the resource. The amendments to the ECL pertaining to reptiles and amphibians provide new protections to these species, while allowing the managed harvest of selected turtles and frogs.

3. NEEDS AND BENEFITS

The proposal would establish regulations pertaining to the protection and, in some cases, the regulated harvest of selected species of turtles and frogs.

The proposal would create a season, size limit, and bag limit for harvesting snapping turtles. Snapping turtles have historically been harvested for food in the absence of any regulatory measures to limit harvest. While a few persons may harvest a turtle for their own consumption, several commercial collectors reportedly harvested thousands of turtles using a variety of methods, including taking of turtles prior to the females having nested for the year. This proposal would protect egg-bearing females prior to nesting, and young turtles that have not reached reproductive size, helping to assure self-sustaining populations for the future. It would also provide bag limits (daily and seasonal) for the harvest snapping turtles.

This proposed regulatory change would also restructure existing regulations pertaining to the harvest of frogs and diamondback terrapins so that all regulations dealing with take of these two species groups (reptiles and amphibians) would be in the same Part of the official compilation of Codes, Rules, and Regulations (6 NYCRR).

Finally, the proposed regulation specifically defines "native" turtles, lizards, snakes, salamanders, and frogs to implement the new provisions of the Environmental Conservation Law that protect these species. In the Department's original proposal, published in the *State Register* on July 18, 2007, definitions were established for "native" turtles, lizards, snakes, salamanders, and frogs. However, the definitions did not specifically refer to "all life stages, including eggs." In the Notice of Adoption, the Department has clarified the meaning of these terms by adding "all life stages, including eggs" to these definitions. This change, which is intended to protect eggs of turtles and other species, is simply a clarification and not a substantial revision to the original proposal.

4. COSTS

There are no other costs associated with these regulatory changes beyond normal administrative costs.

5. LOCAL GOVERNMENT MANDATES

This rule making does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. PAPERWORK

The proposed rules do not impose additional reporting requirements upon the regulated public.

7. DUPLICATION

There are no other local, state or federal regulations concerning hunting season structure and license use. The Department is the primary government agency with regulatory authority for the managed harvest of game species in New York.

8. ALTERNATIVES

The only alternative is "No Action," which is not acceptable for any of the elements of this proposed rule making. Failure to adopt new regulations would mean that the changes to the Environmental Conservation Law would not be fully implemented.

9. FEDERAL STANDARDS

There are no federal standards affecting this regulatory proposal.

10. COMPLIANCE SCHEDULE

Upon the effective date of the proposed regulation.

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

The final text of the proposed rule, as adopted, contains some minor amendments in several sections in order to provide clarification. The definitions of native turtles, snakes, lizards, frogs, and salamanders were each amended to clarify that the regulations address all life stages of these amphibians and reptiles, including eggs. The original proposal, which was published on July 18, 2007, did not explicitly reference "all life stages" or "eggs" of these species. The final text of the rule that is being adopted contains this clarification. The regulatory impact statement has also been updated to explain this change.

The RFA, RAFA, and JIS that were published with the Notice of Proposed Rulemaking remain accurate and do not need to be amended to address this clarification.

Assessment of Public Comment

The Department received comments on the proposed regulation. A summary of those comments and the Department's response follows:

Comment: Uniform bag limits are needed for all frog species due to concern over detrimental impacts to local populations.

Response: The Department acknowledges the concern over local populations. However, the proposed regulation does not change the frog season dates which have been in effect for decades. The proposed regulation protects frog populations for which the Department has current concerns by closing certain areas of the state to the harvest of certain frog species. As new information becomes available indicating that additional regulatory protection is necessary for certain species or certain areas, the Department will propose new regulations to address those issues.

Comment: The harvest of snapping turtles is likely not sustainable, and a hunting season should not be established.

Response: Prior to 2006, snapping turtles could be legally harvested without restrictions since they did not have protected status. The Department views the incorporation of a seasonal restriction and daily and seasonal bag limits as an effective first step at managing the species. The seasonal bag limit of 30 turtles will reduce the effect that commercial harvest may have on the statewide population in New York.

Comment: Only male snapping turtles should be harvested; turtles on land should not be taken to avoid loss of nesting females; size restriction needs to be better defined and justified; and the hunting season should avoid targeting of overwintering aggregations of turtles.

Response: The Department has proposed an open season for snapping turtles from July 15 to September 30. These dates reflect the need to protect overwintering aggregations and avoid the turtle nesting season (late May through early July). The Department views the incorporation of a seasonal restriction and daily and seasonal bag limits as an effective first step at managing the species. The Department will continue to consider the need for additional methods for managing and monitoring snapping turtle populations and harvest.

The size requirement is straightforward - a 12" straight line distance along the longest part of the upper shell (carapace). The size requirement is based on a biological assumption that the turtles reach sexual maturity before they reach this size, and therefore have had the opportunity to breed before they are subject to harvest.

Additionally, in the Department's original proposal, published in the *State Register* on July 18, 2007, definitions were established for "native" turtles, lizards, snakes, salamanders, and frogs. However, the definitions did not specifically make reference to developmental life stages or eggs. In order to remove any ambiguity, the Department has amended the text of the proposed rulemaking by adding "all life stages, including eggs" to the definitions of turtles, lizards, snakes, salamanders, and frogs.

Comment: The Department should develop monitoring programs to track the harvest of frogs and turtles.

Response: The Department acknowledges the utility of a monitoring program for snapping turtle harvest and will consider options such as a permit program or survey instrument to obtain information on turtle harvest. Programs such as the Department's Amphibian and Reptile Atlas Project will continue to be used as the Department explores new ways to gather information about the suite of species impacted by these regulations.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sportfishing Regulations

I.D. No. ENV-08-08-00001-P

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

Proposed action: Amendment of Parts 10, 18, 19, 35 and 180 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316 and 11-1319

Subject: Sportfishing regulations.

Purpose: To revise regulations governing sportfishing and associated activities including gear requirements and use of bait fish; and prohibit the sale of trout and salmon eggs.

Substance of proposed rule (full text is posted at the following State website: www.dec.ny.gov) The purpose of this rule making is to amend the Department of Environmental Conservation's (Department) general regulations governing sportfishing (6 NYCRR Part 10), taking bait (6 NYCRR Part 18), use of bait and bait fish (6 NYCRR Part 19), licenses (6

NYCRR Part 35), and miscellaneous regulations (6 NYCRR Part 180). Following biennial review of the Department's fishing regulations, Department staff have determined that the proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments that the Department is proposing:

Prohibit the act of chumming with fish eggs in order to reduce the harvest of fish (females) specifically for purposes of taking eggs and using them as a method to aggregate and concentrate fish thereby impacting other anglers.

Define "tip-ups" to provided clarity on what constitutes a tip-up including for enforcement of regulations.

Prohibit the sale of trout eggs in order to prevent the harvest of trout for the purposes of selling eggs largely for the use in tributary fisheries by anglers.

Establish a bait fish green list for the purposes of clarifying and defining what bait fish are acceptable for use, and secondly, to identify additional waters where additional species can be used as bait.

Remove American eels from the list of fish that can be spearfished in order to reduce fishing related mortality for American eels.

Clarify that "whitefish" in the Statewide Angling Regulations does not include round whitefish in order to reduce the potential for anglers to keep round whitefish.

Restrict the use of weight on the line, leader, swivels or artificial flies used in the Salmon River Fly Fishing only area in order to reduce snagging of salmonids and to provide consistency to the Great Lakes regulations.

Refine the allowable fishing tackle that may be used in the special regulations fly fishing catch and release areas on the Salmon River in Oswego County in order to offer an unimpeded traditional fly fishing experience.

Extend the winter "catch and release only" black bass season in Suffolk and Nassau Counties to provide additional angling opportunity.

Remove the special regulation for trout in Greenwood Lake Orange County, which is no longer necessary due to the lack of viable trout population and to be consistent with the State of New Jersey.

Remove the special regulation for black bass in Greenwood Lake Orange County, to afford additional protection to the black bass population and to be consistent with the state of New Jersey.

Establish a special regulation for kokanee salmon in Glass Lake in Rensselaer County with a minimum creel limit of three fish and 12 inch minimum size limit in order to reduce harvest and afford protection to the kokanee salmon population.

Establish a three fish creel limit with a minimum size limit of 12 inches for trout in Beardsley Lake in Montgomery and Herkimer Counties, Kyser Lake in Fulton and Herkimer Counties and Stillwater Reservoir in Herkimer County, in order to provide for the harvest of larger size trout in waters capable of growing large fish while providing sufficient protection for these quality fisheries.

Reduce the creel limit on walleye and sauger in Lake Champlain to "3 fish in combination" to provide better protection of walleye and sauger stocks and provide continuity between NY and Vermont regulations.

Provide clarity to the description of the Boquet River portion of the "Additional Lake Champlain Tributary Regulations".

Prohibit the use of bait fish in waters such as the Henderson Lake in the Town of Newcomb in Essex County, and in the Giant Mountain Wilderness Area in order to prevent more non-native fishes from becoming established which impairs the ability to restore native salmonids.

Prohibit the use of bait fish in Wheeler and Clear Ponds in the Town of Webb in Herkimer County in order to protect these reclaimed brook trout waters from non-native fish introductions.

Add the ponds and streams in the Raquette-Boreal Wilderness Area to the list of waters that restrict the use of bait fish in order to minimize the potential of introducing competing species to these sensitive brook trout ponds.

Remove the special regulations that prohibit fishing in Lake George tributaries (in Essex, Warren and Washington Counties) from October 1 to March 15 at any time and from April 1 to May 15th from 10 p.m. to 5 a.m. as the lack of salmon reproduction no longer warrants this special regulation.

Create a three fish creel limit with a minimum size limit of 12 inches for trout in the ponds contained with the Massawepie Conservation Easement Area in St. Lawrence County (Pine, Boottree, Town Line, Deer and Horseshoe) as well as within Tamarack Pond in St. Lawrence County in

order provide for a trophy brook trout water by protecting excessive harvest and to protect these heritage brook trout brood sources.

Eliminate the ice fishing permitted regulation on the Mohawk River (Barge Canal) in Herkimer County as this special regulation is not necessary for allowing ice fishing on this non-trout water.

Create a catch and release, use of artificial lures only regulation in Wheeler and Clear Ponds in the Town of Webb in Herkimer County in order to protect against harvest as a large percentage of the fish are needed for the ongoing heritage brook trout evaluation study.

Eliminate the special regulation for walleye on Lake Bonaparte in Lewis County and on Trout Lake in Lewis County as the 5 year time period effort to establish a walleye population here, including with stocking has expired.

Create a special trout regulation, with a creel limit of five fish, with no more than two fish longer than 12 inches on the Lansing Kill in Oneida County, for the purposes of protecting the valuable larger trout and thereby maintaining a large trout quality fishery.

Eliminate the special regulation prohibiting smelt fishing in Portaferry Lake in St. Lawrence County as no smelt runs have been reported in many years.

Extend the catch and release section for trout of West Canada Creek in Herkimer and Oneida counties in order to expand the area with this angling opportunity, increase the number of fish available to anglers and to reduce overcrowding on West Canada Creek.

Extend the current year round catch and release season for trout on the West Branch St. Regis in St. Lawrence County to all year, thereby increasing angling opportunity.

Eliminate the special regulation requiring catch and release fishing for trout on the South Branch of the Grass River in St. Lawrence County and replace with the statewide regulation as with the lack of larger fish and lack of heavy fishing pressure a special regulation is not warranted.

Modify the wording for the area in Jefferson County that is exempt from the 50 fish limit on yellow perch and sunfish, in order to clarify and reduce confusion.

Modify the wording for the area in Jefferson County that is exempt from the statewide black bass catch and release season, in order to clarify and reduce confusion.

Eliminate the special regulation requiring catch and release fishing for trout on Allen Pond in St. Lawrence County and replace it with a three fish creel limit and 12 inch minimum size limit, which will provide sufficient protection to this quality trout fishery and allow for the harvest of trout.

Remove the special regulation for lake trout on Woodhull Lake in Herkimer County as surveys have indicated that the lake trout have no limitations on reaching larger sizes and a special regulation is not warranted.

Establish a special regulation for Ellicott Creek in Erie County in order to provide anglers the opportunity to harvest trout within Amherst State Park.

Text of proposed rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8920, e-mail: sxkeeler@gw.dec.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.

Additional matter required by statute: A Programmatic Impact Statement is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory Authority

Sections 3-0301 of the Environmental Conservation Law (ECL) establishes the general functions, powers and duties of the Department of Environmental Conservation (Department) and the Commissioner, including general authority to adopt regulations. Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Section 11-0317 of the ECL empowers the Department to adopt regulations, after consultation with the appropriate agencies of the neighboring states and the Province of Ontario, establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara River and the St. Lawrence River. Sections 11-1301 and 11-1303 of the ECL empower the Department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-

0339 of the Environmental Conservation Law), in all waters of the state. Section 11-1316 of the Environmental Conservation Law empowers the Department of Environmental Conservation to designate by regulation waters in which the use of bait fish is prohibited. Section 11-1319 of the Environmental Conservation Law prohibits the sale of trout and salmon.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are tools used by the Department in achieving the intent of the legislation referenced above. The purpose of setting seasons is to prevent over-exploitation of fish populations during vulnerable periods, such as spawning, thereby ensuring a healthy population. Size limits are necessary to maintain quality fisheries and to ensure that adequate numbers survive to spawning age. Creel limits are used to distribute the harvest of fish among many anglers and optimize resource benefits. Regulations governing the manner of taking fish upgrade the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, and limit exploitation. Catch-and-release fishing regulations are used in waters capable of sustaining outstanding growth and providing a large population of desirable-sized fish, creating an outstanding opportunity for anglers willing to forego harvesting fish.

3. Needs and Benefits

Most significant fishery resources in New York State are monitored through annual or periodic survey and inventory by Bureau of Fisheries staff. These fisheries surveys identify particular situations where changes in fishing regulations may be required to maintain the quality of a particular fishery or where significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of users groups or the need to correct or clarify existing regulations. Concepts for regulation amendments that address identified needs are developed by Bureau of Fisheries staff and reviewed with sportsmen's groups at the local, regional, or state-wide level, depending upon the significance of the proposal.

In order to facilitate compliance by the angling public, significant revisions of the Department's fishing regulations are currently conducted on a biennial schedule. The proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

4. Costs

Enactment of the rules and regulations described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

6. Paperwork

No additional paperwork will be required as a result of these proposed changes in regulations.

7. Duplication

There are no other state or federal regulations which govern the taking of fish.

8. Alternatives

The primary alternative to the proposed regulations would be to retain current fishing regulations. In the absence of the proposed changes, opportunities to enhance the quality or public use and enjoyment of fisheries may be deferred or lost. Some fish populations may decline if the proposed regulations are not enacted in a timely manner.

9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

10. Compliance Schedule

These regulations, if adopted, will be in effect for the 2008-2009 license year, which begins on October 1, 2008. It is anticipated that regulated persons will be able to immediately comply with these regulations once they take effect.

Regulatory Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. These amendments were developed as a result of the Department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The Department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, record-keeping or other compliance requirements on small businesses or local governments. All reporting or record-keeping requirements associated with sportfishing are administered by the Department. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rule making proposal does not change this process.

Fishing guides are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions ECT) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Based on the above, the Department has determined that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. These amendments were developed as a result of the Department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The Department has determined that the proposed rules will not impose an adverse impact or any new or additional reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. All reporting or record-keeping requirements associated with sportfishing are administered by the Department. The proposed regulations are not anticipated to negatively change the number of participants or the frequency of participation in regulated activities.

Fishing guides are the only entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions ECT) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rule making proposal does not change this process.

Since the Department's proposed rule making will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, record-keeping, or other compliance requirements, the Department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing. These amendments were developed as a result of the Department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

Fishing guides are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions ECT) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes, and no fishing guide jobs should be lost. In fact, positive impacts are anticipated for these businesses because the proposed

regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Based on the above, the Department has concluded that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a job impact statement is not required.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Qualifications of Local Health Department Personnel

I.D. No. HLT-08-08-00012-P

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

Proposed action: Amendment of Part 11 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225(4), (5) and 206(1)(a)

Subject: Qualifications of local health department personnel.

Purpose: To support hiring of competent appropriately trained local public health professionals; assist local health departments to hire and retain competent staff in positions affected by public health worker shortages; and increase training to strengthen the competencies of the current public health workforce in local health departments.

Text of proposed rule: The table of contents for Part 11 is amended to read as follows:

PART 11
QUALIFICATIONS OF PUBLIC HEALTH PERSONNEL
(Statutory authority: Public Health Law, Section 225)

Sec.
GENERAL PROVISIONS
11.0 Purpose, scope and construction
* * *

PUBLIC HEALTH NURSE 1
11.40 Definition
11.41 Entry level qualifications
[11.42 Supervisory level qualifications]

PUBLIC HEALTH NURSE 2
11.42 Definition
11.43 Qualifications
11.44 Supervisory level definition
11.45 Supervisory level qualifications
* * *

ENVIRONMENTAL HEALTH DIRECTOR
11.90 Definitions
11.91 Qualifications
* * *

PUBLIC HEALTH [OFFICIAL] SOCIAL WORKER
* * *

PUBLIC HEALTH EPIDEMIOLOGIST
11.196 Definition
11.197 Minimum qualifications
11.198 Supervisory level qualifications

Subdivision (d) of Section 11.0 is amended to read as follows:

(d) All public health professionals in the employ of local health [units] departments on January 1, [1979] 2008, and [possessing current Health Department certification] in a title *described in this part* at the entry or supervisory level, shall be considered as meeting the qualifications prescribed by this Part for entry or supervisory levels, respectively.

Subdivision (a)(2)(i) and (ii) of Section 11.2 are amended to read as follows:

(i) a baccalaureate degree from a regionally accredited or New York State registered [four-year] college or university and two years of [supervisory] experience in the administration, enforcement or management of a health or public health related program, *including one year of supervisory experience*; or

(ii) a master's degree in public health or a related field from a regionally accredited or New York State registered college or university and one year of supervisory experience in the administration, enforcement or management of a health or public health related program; or

Section 11.11 is amended to read as follows:

11.11 Qualifications.

(a) A commissioner of health of a county, or a city having a population of 50,000 or more and having an established department of health, shall be a physician who is currently registered to practice medicine in New York State and possesses two [one] years of experience in administrative practice that demonstrates that the candidate possesses the knowledge and skills to administer public health programs including workforce and budget management, effective communications, effective establishment and implementation of policy or business goals, and compliance with legal requirements and:

(1) certification by the American Board of Preventive Medicine, or

(2) a master's degree in public health [or a related field] from a regionally accredited or New York State-registered college or university that demonstrates the core competencies of a masters in public health (Biostatistics, Environmental Health Sciences, Epidemiology, Health Policy and Management, and Social and Behavior Sciences) or a masters degree in a related field from a regionally accredited New York State-registered college or university. [; or]

[(3) an appropriate combination of education and experience deemed equivalent by the State Commissioner of Health.]

(b) All appointments to the position of commissioner of health must be approved by the State Commissioner of Health.

(c) Candidates who do not meet the education or experience requirements of this section may be conditionally approved by the State Commissioner of Health for an appointment of two years, with an opportunity for two additional one year conditional renewals. Final approval of these candidates shall be contingent on satisfactory progress in meeting a public health education or experience plan developed in conjunction with and approved by the State Commissioner of Health.

Sections 11.40 and 11.41 are amended to read as follows:

PUBLIC HEALTH NURSE 1

11.40 Definition.

The term public health nurse 1 shall mean a nurse who plans, provides, directs and evaluates nursing care in a variety of settings with the goal of improved health outcomes and [offers instruction and guidance in health practices for] is actively involved in the planning, development, provision and evaluation of public health programs designed to prevent disease and improve the health of individuals, [and] families, specific populations, high risk groups and/or communities.

11.41 Entry level qualifications.

A public health nurse 1 must possess a baccalaureate degree in nursing from a regionally accredited or New York State-registered [four-year] college or university, as well as licensure and current registration[,] to practice as a registered professional nurse in New York State.

Section 11.42 is repealed and a new section 11.42 is added to read as follows:

PUBLIC HEALTH NURSE 2

11.42 Definition.

The term public health nurse 2 shall mean a nurse who plans, provides, directs and evaluates nursing care in a variety of settings with the goal of improving health outcomes and is actively involved in the planning, development, provision and evaluation of public health programs designed to prevent disease and improve the health of individuals, families, specific populations, high-risk groups and/or communities. The public health nurse 2 is also involved in program administration and/or program budget development and monitoring and/or quality improvement initiatives, and/or acting as advocate and liaison for constituents.

New sections 11.43, 11.44 and 11.45 are added to read as follows:

11.43 Qualifications.

A public health nurse 2 must meet the qualifications for public health nurse 1 and have one year of experience in public health nursing.

A public health nurse 2 must complete 15 hours of continuing education in public health related topics approved by the New York State Department of Health within the first year of employment in the title.

11.44 Supervisory level definition.

The term supervising public health nurse shall mean a nurse who supervises public health nurses 1 and 2 and other staff. A supervising public health nurse plans, provides, and evaluates nursing care in a variety of settings with the goal of improving health outcomes and is actively involved in the planning, development, provision and evaluation

of public health programs designed to prevent disease and improve the health of individuals, families, specific populations, high-risk groups and/or communities. A supervising public health nurse may be involved in program administration and/or program budget development and monitoring and/or quality improvement initiatives, and/or acting as advocate and liaison for constituents and/or policy development.

11.45 Supervisory level qualifications.

A supervising public health nurse must meet the qualifications for public health nurse 1 and have two year's experience in public health nursing; or a master's degree in nursing from a regionally accredited or New York State-registered college or university and one year of experience in public health nursing.

A supervising public health nurse must complete 15 hours of continuing education in public health and management related topics approved by the New York State Department of Health within the first year of employment in this title.

New sections 11.90 and 11.91 are added to read as follows:

ENVIRONMENTAL HEALTH DIRECTOR

11.90 Definitions.

(a) The term environmental health director shall mean a person who administers and manages the environmental health programs of a county, or a city having a population of 50,000 or more.

(b) The term natural science shall mean a science such as biology, chemistry or physics that deals with the objects, phenomena, or laws of nature and the physical world. It shall include all physical and biological sciences.

(c) The term applied science shall mean science based courses in environmental technology, sanitation technology, medical technology, public health, infection control or food science.

11.91 Qualifications.

An environmental health director must possess:

(a) a baccalaureate degree from a regionally accredited or New York State registered college or university in sanitary, environmental, chemical, civil or public health engineering or a related engineering field; or a bachelor's degree from a regionally accredited or New York State registered college or university with thirty (30) credit hours in the natural sciences, of which not more than twelve (12) credit hours may be in the applied sciences; and

(b) two years of administrative and supervisory experience as a supervising engineer or supervising sanitarian as defined in this Part; or five years of environmental health experience, including two years of supervisory responsibility that demonstrates that the candidate has the technical and administrative skills necessary to manage programs that can anticipate, recognize and respond to environmental health challenges. A master's degree in public or environmental health or a related field that demonstrates the five core competencies of a public health education (Biostatistics, Environmental Health Services, Epidemiology, Health Policy and Management and Social and Behavior Sciences) may be substituted for up to two (2) years of the required environmental health experience.

Sections 11.100 and 11.101 are amended to read as follows:

11.100 Definition.

The term public health engineer shall mean a person who applies engineering principles for the detection, evaluation, control and management of those factors in the environment which influence the public's [man's] health.

11.101 Entry level qualifications.

A public health engineer must possess a baccalaureate degree in engineering from a regionally accredited or New York State registered [four-year] college or university or a license to practice as a professional engineer in New York State.

Section 11.110 is amended to read as follows:

11.110 [Definition.] Definitions.

(a) The term public health sanitarian shall mean a person who applies the principles of the [physical, biological] natural and social sciences for the detection, evaluation, control and management of those factors in the environment which influence the public's [man's] health.

(b) The term natural science shall mean a science such as biology, chemistry or physics that deals with the objects, phenomena, or laws of nature and the physical world. It shall include all physical and biological sciences.

(c) The term applied science shall mean science based courses in environmental technology, sanitation technology, medical technology, public health, infection control or food science.

Section 11.111 is amended to read as follows:

11.111 Entry level qualifications.

A public health sanitarian:

(a) must possess a baccalaureate degree from a regionally accredited or New York State registered [four-year] college or university with 30 credit hours in the [physical and biological] *natural sciences, of which not more than twelve (12) credit hours may be in the applied sciences, and have satisfactorily completed a public health training course approved by the State Health Department within [one] two years of appointment; or*

(b) may be a public health technician who possesses five years of experience as a public health technician deemed satisfactory by the local commissioner of health or public health director and have satisfactorily completed a *public health training course approved by the State Health Department.*

Section 11.112 is amended to read as follows:

A supervising public health sanitarian must meet the qualifications for a public health sanitarian and have two years [,] of experience as a public health sanitarian.

Section 11.121 is amended to read as follows:

11.121 Entry level qualifications.

A public health technician must possess an associate degree from a regionally accredited or New York State registered [two-year] college or university or have completed 60 credit hours, with a minimum of [12] 15 credit hours in the [physical and biological] *natural sciences [in either case], of which not more than six (6) credit hours may be in the applied sciences, and have satisfactorily completed a public health training course approved by the State Health Department within two years of appointment.*

Section 11.130 is repealed and a new Section 11.130 is added to read as follows:

11.130 Definition.

The term local public health nutritionist shall mean a person who plans, develops, implements and evaluates nutrition services within the community and is actively involved in the planning, development, provision and evaluation of nutritional programs and services designed to prevent disease and improve the health of individuals, families, and communities.

Sections 11.131 and 11.132 are amended to read as follows:

11.131 Entry level qualifications.

A *local public health nutritionist* must possess a baccalaureate degree, with major studies in food and nutrition, from a regionally accredited or New York State-registered [four-year] college or university, and be registered as a *dietician* [or be eligible for registration] by the American Dietetic Association.

11.132 Supervisory level qualifications.

A supervising public health nutritionist must meet the qualifications for a public health nutritionist and have two years' experience as a public health nutritionist, or have a master's degree in nutrition or public health nutrition *from a regionally accredited or New York State-registered college or university, and one year of experience as a public health nutritionist.*

Sections 11.150, 11.151 and 11.152 are amended to read as follows:

11.150 Definitions.

The term *local public health educator* shall mean a person who applies the principles of behavioral sciences in public health programs to foster the voluntary adaptation of behavior to improve or maintain health.

11.151 Entry level qualifications.

A *local public health educator* must possess:

(a) a baccalaureate degree in *health education, health science, public health, health promotion, community health, or health communications* from a regionally accredited or New York State-registered [four-year] college or university; or

(b) a baccalaureate degree in *education, nursing, epidemiology, wellness and fitness, or nutrition from a regionally accredited or New York State-registered college or university and one year experience in health education; or [a health-related field and two years experience in health education.]*

(c) a baccalaureate degree in *marketing, human services, social work or psychology from a regionally accredited or New York State-registered college or university and two years experience in health education; or*

(d) a master's degree in *public health or health education from a regionally accredited or New York State-registered college or university.*

A *local public health educator* must satisfactorily complete 15 hours of continuing education in health education related topics approved by the New York State Health Department within one year of appointment.

11.152 Supervisory level qualifications.

A supervising public health educator must meet the qualifications for *local public health educator* and have two years['] of experience as a public health educator or have a master's degree in public health *or health education from a regionally accredited or New York State registered college or university and one year[']s of experience as a public health educator.*

Section 11.171 is amended to read as follows:

11.171 Entry level qualifications.

A public health social worker must [possess certification in social work] *be licensed as a certified social worker* by the New York State Education Department.

Section 11.182 is amended to read as follows:

11.182 Qualifications.

(a) A public health director shall possess:

(1) a master's degree in public health [or a related field] *from a regionally accredited or New York State-registered college or university [and] that demonstrates the core competencies of a public health education (Biostatistics, Environmental Health Sciences, Epidemiology, Health Policy and Management, and Social and Behavior Sciences) or a masters degree in a related field from a regionally accredited or New York State-registered college or university. Related fields include public health nursing, health administration, community health education or environmental health; and*

(2) two [three] years of [public health administration] *administrative experience in a health related organization or government agency that demonstrates that the candidate possesses the knowledge and skills necessary to administer public health programs including workforce and budget management, effective communication, effective establishment and implementation of policy or business goals, and compliance with legal requirements. [, or an appropriate combination of education and experience deemed equivalent by the State Commissioner of Health.]*

(b) All appointments to the position of public health director and the appointment and arrangements for the medical consultant are subject to the approval of the State Commissioner of Health.

(c) *Candidates who do not meet the education or experience requirements of this section may be conditionally approved for an appointment of two years by the State Commissioner of Health with an opportunity for two additional one year conditional renewals. Final approval of these candidates shall be contingent on satisfactory progress in meeting a public health education or experience plan developed in conjunction with and approved by the State Commissioner of Health.*

[(c) Persons occupying a similar position as of January 1, 1979 with current health department certification shall be considered as meeting the qualifications for this position.]

New sections 11.196, 11.197 and 11.198 are added to read as follows:

PUBLIC HEALTH EPIDEMIOLOGIST

11.196 Definition.

The term local public health epidemiologist shall mean a person who investigates the occurrence of disease, injury or other health-related conditions or events in populations to describe the distribution of disease or risk factors for disease occurrence for the purpose of population-based prevention and control.

11.197 Minimum qualifications.

A *local public health epidemiologist* must possess:

(a) a master's degree from a regionally accredited or New York State-registered college or university in *epidemiology, or in public health with a concentration in epidemiology, or a health related field with a minimum of six credits in epidemiology and six additional credits in epidemiology or biostatistics; or*

(b) a bachelor's degree or higher from a regionally accredited or New York State-registered college or university and two years experience conducting data collection, analysis and reporting in support of surveillance and epidemiologic investigations.

11.198 Supervisory level qualifications.

A supervising *local public health epidemiologist* must meet the qualifications for a public health epidemiologist and have two additional years of experience conducting data collection, analysis and reporting in support of surveillance and epidemiologic investigations.

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

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

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

Regulatory Impact Statement

Part 11 of the New York State Sanitary Code in Chapter I of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York establishes the minimum qualifications and job definitions of key public health professionals employed by local health departments. The proposed revisions affect the following job titles: commissioner of health and public health director, public health nurse, environmental health director, public health engineer, public health sanitarian, public health technician, public health nutritionist, public health educator, public health social worker and public health epidemiologist. These changes modernize job definitions and qualifications and are necessary to ensure that local health departments are able to fill key public health positions with competent, appropriately trained individuals able to meet the ongoing and emerging public health needs of local communities. These sections of the Code have not been amended since 1979. The proposed changes have the goal of assisting local health departments to hire and retain competent staff in positions affected by public health worker shortages. The proposed changes also have the goal of ensuring that first year employees in a number of positions obtain continuing education so that they can be prepared to address the increasing number of responsibilities facing the public health workforce, including both traditional and emerging public health issues. The benefit is a set of regulations that reflect up to date professional job definitions and qualifications and the training needs of the public health workforce.

The statutory authority for these regulations comes from Section 225(4) and (5) (b) of the Public Health Law ("PHL") that authorize the Public Health Council to establish and amend State Sanitary Code provisions related to the qualifications of public health personnel working in county and city health departments. PHL Section 225(5)(a) provides that the State Sanitary Code may deal with any matters affecting the security of life or health or the preservation and improvement of public health in the state. PHL Section 206(1)(b) authorizes the Commissioner of Health "to exercise general supervision over the work of all local boards of health and health officers."

The potential costs for implementing these changes will be minimal and are related to requiring local public health commissioners and directors who are conditionally appointed to develop and implement a public health experience and/or education plan during their conditional appointment and the potential loss of state aid to a county that fails to appoint a qualified candidate, establishing the new public health nurse 2 position, implementing the continuing education requirement for supervising public health nurses, public health educators and public health technicians, establishing the new position of local public health epidemiologist, and the administrative work of issuing new class specifications and announcements that reflect the Code changes. Implementing these changes will create minimal additional paperwork related to the need to monitor the progress of local commissioners of health and public health directors who are conditionally appointed toward achievement of education and experience requirements, and for tracking the completion of continuing education requirements for nurses, public health educators and sanitarians/technicians. Civil service agencies will be required to amend their class specifications to conform to the changes to Part 11, which establishes minimum standards for these positions. In addition, nurses in the public health nurse 2 and supervisory public health nurse positions, public health educators, public health sanitarians and technicians will be required to obtain continuing education. There is no duplication of this initiative in state or federal law, no significant alternatives for revising these job definitions and qualifications, and no federal standards for minimum qualifications of these professionals.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

These proposed changes will have minimal or no impact on small businesses (local hospitals, health clinics and other settings that employ Bachelor's prepared nurses). There are approximately 6 hospitals and 15 nursing homes that employ less than 100 people in New York State. There are 397 licensed clinics; information about how many operate as small businesses is not available. These settings, if they hire bachelor's prepared nurses, may experience some impact if nurses choose to work at LHDs rather than other health care settings because of additional opportunities created by adding a title of Public Health Nurse 2.

These regulations will apply to all LHDs and county civil service agencies.

Compliance Requirements:

The county civil service agencies will be required to work with the LHDs to update their class specifications for the positions that are changed as a result of this reform.

Professional Services:

No additional professional services will be required. Updating class specifications is part of the regular work of local civil service offices.

Compliance Costs:

No capital costs of compliance are anticipated. One time compliance costs related to updating class specifications are minimal since updating is part of the regular work of local civil service offices. Annual costs related to training these titles are minimal and are described in the Regulatory Impact Statement.

Economic and Technological Feasibility Assessment:

There are no issues of technical feasibility.

Minimizing Adverse Impact:

The anticipated adverse impact of updating job definitions, changing the minimum qualifications and requiring training for public health professionals will be minimized by making training available on-line or by other distance learning formats.

Small Business and Local Government Participation:

LHDs have been consulted in this process through participation on the committees that developed the new language. The State Department of Civil Service Municipal Service Division has been consulted about these changes and has offered assistance in the development of the language. CSEA, the union that represents most LHD staff was also consulted.

Rural Area Flexibility Analysis

Effect on Rural Areas:

These proposed changes will apply statewide. These are expected to have minimal or no impact on LHDs and county civil service agencies in rural areas, except that they should make it easier for those LHDs to identify local public health educators eligible for positions.

Compliance Requirements:

The county civil service agencies in rural areas will be required to work with the LHDs to update their class specifications for the positions that are changed as a result of this reform.

Professional Services:

No additional professional services will be required. Updating class specifications is part of the regular work of local civil service offices in rural areas.

Costs:

No capital costs of compliance are anticipated. One time compliance costs related to updating class specifications are minimal since updating is part of the regular work of local civil service offices. Annual costs related to training these positions are minimal and are described in the Regulatory Impact Statement.

Minimizing Adverse Impact:

To strengthen the public health work force, there are no alternatives to updating job definitions, changing the minimum qualifications and requiring training for public health professionals. Adverse impacts have been minimized by making training available on-line or by other distance learning formats.

Rural Area Participation:

LHDs, including those in rural counties, have been consulted in this process through participation on the committees that considered the new language. The State Department of Civil Service Municipal Service Division has been consulted about these changes and has offered assistance in the development of the language. CSEA, the union that represents most LHD staff was also consulted.

Job Impact Statement

The Department of Health has determined that this regulatory change will not have an adverse impact on jobs and employment. It should increase staff retention by providing for promotional opportunities and training. It should also increase the number of qualified applicants for public health positions at LHDs. Because the State Department of Health uses different titles for public health professionals, the changes will have no impact on State Department of Health jobs or employment.

Division of Housing and Community Renewal

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

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

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

Proposed action: Addition of Part 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 proposed 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 other partners have a direct or indirect interest, or which are controlled by other partners, 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.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Private Housing Finance Law (PHFL) section 13 gives the Division of Housing and Community Renewal (DHCR) approval rights over the creation of limited profit housing companies and documents relating to their incorporation and internal governance, and PHFL section 17(2) gives DHCR authority and review powers over a housing company's rules relating to the management of its business, regulation of its affairs, and such other corporate provisions as are reasonable and necessary. PHFL section 16 authorizes the DHCR to promulgate regulations with respect to partnerships in which housing companies subject to PHFL Article II may participate. PHFL section 32(3) empowers the DHCR to promulgate regulations with respect to housing companies under its supervision, PHFL section 32-a(6) specifically empowers DHCR to promulgate regulations with respect to management, and PHFL section 32(7) sets forth standards for the exercise of DHCR's legal remedies. PHFL section 27(4) provides that contracts for operation require the consent of DHCR and gives DHCR authority and the power of consent over transfers of real property. PHFL section 32(1) authorizes DHCR to examine a company and keep informed as to its condition, capitalization, acquisition, rehabilitation and operation.

PHFL section 73(2) gives DHCR broad consensual authority over who may participate in a limited dividend housing company as well as over such company's participation in partnerships. PHFL section 73 provides for DHCR's approval of certificates of incorporation, and PHFL section 72(4) provides that such certification must provide that any acquisition of real property be for the purpose of promoting public health and safety. PHFL section 82 provides that a company can not acquire or sell real property, encumber its real property to an partnership, enter into contracts for the operation of or dissolve or terminate a trust without the consent of the Commissioner. PHFL section 84 empowers the Commissioner to be kept advised as to the operation of limited dividend housing companies and provides that the Commissioner may require specific answers to specific questions about which the Commissioner may desire information, may investigate into a limited housing company's dealings with third parties, and may make and amend regulations for the purpose of carrying out the provisions of the limited dividend law.

2. LEGISLATIVE OBJECTIVES

Regulations governing the conduct of partnerships, as well as the transfer of the interests in those partnerships, are expressly provided for by statute and are a necessary adjunct to the supervision of those housing companies as created under the PHFL. Similarly, regulation of the transfer of the housing companies themselves is specifically provided for by law, and the sale of shares in a company is subject to DHCR's authority given its powers over management and operation, as well as over sales of both legal and beneficial interests in the housing companies.

3. NEEDS AND BENEFITS

Partnerships were specifically contemplated under the PHFL because they are an investment vehicle which is particularly suited to working in tandem with a housing company. Partnerships allow housing companies to raise capital from multiple sources and at the same time provide the benefits of ownership by more than one investor. Although administration of the PHFL requires DHCR to approve transfers of ownership interests, there are no regulations governing the approval process, and their absence causes uncertainty among the regulated parties. These regulations codify DHCR's role and standards in this important process. The regulations with respect to partnership supervision assure that the obligations placed on housing companies are not circumvented or impinged upon by the use of such partnerships. The regulations with respect to the transfer of the housing company or partnership allow DHCR to assure that responsible individuals and entities will be in control of the housing company. These housing companies, although privately owned, are a resource in which the State has invested significant resources, such as: below-market-rate mortgages and tax exemptions, and through DHCR's day-to-day supervision. This State investment ensures that a vulnerable group of the State's citizenry, those of low-and moderate-income, is safely and securely housed in accordance with the requirements of the Mitchell-Lama and/or limited-dividend programs, program, which are governed by Articles II and IV of the PHFL respectively.

4. COSTS

The costs of implementation should be relatively minimal compared with the value of these properties, and are an already generally accepted cost of dealing with government supervised and subsidized housing. The United States Department of Housing and Urban Development (HUD) and New York City's Department of Housing Preservation and Development (HPD) already have similar requirements. HUD has promulgated forms for collection of this information which the federal office of Management and Budget has estimated take approximately one hour to complete. Those developments with federal subsidies will already be providing similar information to that government agency and have been required to provide this information to DHCR at their inception as an express requirement of the PHFL.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The submissions to DHCR will constitute additional paperwork. However, the legal actions subject to these regulations are already paper intensive, and obtaining information from these housing companies as it affects ownership and operation is a right, if not an obligation, specifically imposed upon DHCR by law. This regulation merely standardizes that which DHCR can already obtain on a case-by-case basis.

The substantive information in the submissions required under the regulation is analogous to that which would be sought by any responsible lender, investor, transferor, or transferee in the exercise of due diligence as part of the transactions or transfers contemplated by these regulations. In comparison to the paperwork and other expenses associated with these transactions and contemplated acts, these submissions to DHCR are not a significant additional burden as to paperwork. Moreover, absent these regulations, the transfer of a project to an unqualified or irresponsible owner would inevitably result in more paperwork to secure compliance with program requirements. Additionally, as noted above, the HUD forms which collect very similar information are estimated to take an hour to complete.

7. DUPLICATION

Many of these housing companies are also in receipt of federal subsidies or state mortgages which already require, either by regulation or agreement, similar vetting either by a federal or state agency. In the course of its supervision, DHCR already communicates and coordinates its efforts with these agencies to reduce duplication of effort and will continue to do so.

8. ALTERNATIVES

The first alternative considered was no regulation at all. However, based on the needs and benefits articulated herein, this was rejected.

The second alternative contemplated were options with respect to the standards of review by which DHCR would exercise its authority. The standards chosen were found to be optimal largely because they are built upon HUD standards and include other circumstances with respect to the operation and ownership of property which may have a bearing on the proposed transferee's fitness to participate in governmentally subsidized real estate programs. These standards adopted in these amendments constitute an improvement over existing standards for all concerned.

9. FEDERAL STANDARDS

The standard for approval follows, in many instances, the standards in HUD's Previous Participation Certification Program, but adds other requirements, such as the proposed transferee's more general history in the field of real estate, as well as whether the proposed transferee demonstrates the ability to comply with Mitchell-Lama program standards. These are largely self-evident standards. A broader analysis of the proposed transferee's history with both governmentally-supervised and non-supervised housing gives DHCR a more complete picture from which to make its determination. As to DHCR's assessment of the proposed transferee's capacity to comply with Mitchell-Lama or limited dividend housing program standards, since these are indeed the standards of these two programs, this is an appropriate requirement and standard for review of any transaction contemplated by these regulations.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

To the extent that any of the approximately one hundred and ninety affected limited-profit housing companies subject to DHCR supervision are small businesses, the amended regulations are not expected to have a burdensome impact on such small businesses.

These amendments are expected to have no impact on local government.

2. COMPLIANCE REQUIREMENTS

The amendments require, on a somewhat limited basis, regulated parties to become involved in certain additional record keeping, reporting, and other additional acts and do require that those acts be accurately and completely reported to DHCR. However, the regulation merely standardizes the receipt of information which DHCR currently requests on a case-by-case basis for transactions encompassed by these regulations. By placing the requirement in regulations, small businesses can rationally plan in advance for DHCR's review. There are no new compliance requirements placed on local governments.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small businesses to obtain any new or additional professional services. Since inception, each company has retained counsel, agents, contractors and other professionals to implement the statutory and regulatory requirements of the Private Housing Finance Law and both the transferor and transferees will be using such professionals to advise them as part of the transactions encompassed by these regulations.

4. COMPLIANCE COSTS

There is no indication that this action will impose any significant costs upon small businesses or upon local governments. There will be no annual cost of compliance with the new rules. The rule is designed to ameliorate significant adverse economic impact by making its reporting and review requirements applicable only where a transaction is taking place rather than imposing it as an a periodic compliance requirement. The transactions themselves reflect the major cost (as well as profit) to these businesses, rather than DHCR's approval of the transactions.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

DHCR determined it could not further limit its review and the possible adverse impact of these regulations and accomplish its objectives. As previously stated, DHCR did limit their adverse impact by making the reporting requirements coextensive with the actual event which DHCR needs to review and regulate rather than by creating a periodic reporting requirement.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

Small businesses and local government were given an opportunity to comment, as the drafts of the regulations were made available prior to the commencement of the SAPA process by circulation of a DHCR "management bureau memorandum" to all housing companies, and placed on DHCR's web site.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

Although approximately 20 housing developments for families or senior citizens are in rural counties, all are federally-assisted developments which are already subject to HUD reporting requirements. It is not anticipated that the new regulation will impose significant reporting, record-

keeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

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

It is not anticipated that any additional professional services will be needed for housing companies located in rural counties to comply with this regulation as each housing company already has professionals who are retained to assure compliance with DHCR regulations.

3. COSTS:

It is not anticipated that these regulations will cause a significant variation in costs for the housing companies located in the rural counties.

4. MINIMIZING ADVERSE IMPACT:

No adverse impact upon the housing companies is anticipated.

5. RURAL AREA PARTICIPATION:

Housing companies in rural areas were given an opportunity to comment, as the drafts of the regulations were made available prior to the commencement of the SAPA process by circulation of a DHCR "management bureau memorandum" to all housing companies. In addition, the drafts of the regulations were placed on DHCR's web site.

Job Impact Statement

The regulation pertains to paper intensive business transactions and it is apparent from the text of the regulation that any additional paperwork as a result of the regulation will have no adverse impact on jobs and employment opportunities.

Housing Finance Agency

AMENDED NOTICE OF ADOPTION

Qualified Allocation Plan

I.D. No. HFA-48-07-00003-AA

Filing No. 105

Filing date: Feb. 5, 2008

Effective date: Feb. 13, 2008

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

Action taken: Amendment of sections 2188.1, 2188.2, 2188.4, 2188.5 and 2188.7 of Title 21 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on January 29, 2008, to be effective February 13, 2008, File No. 53. The notice of adoption, I.D. No. HFA-48-07-00003-A, was published in the November 28, 2007 issue of the *State Register*.

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

Subject: Agency's qualified allocation plan.

Purpose: To authorize the agency to allow Federal low income housing tax credits to projects financed by other bond issuers.

Substance of amended rule: Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations, Revenue Rulings and Procedures, and other publications of the Internal Revenue Service with binding authority applicable thereunder (collectively, the "Code") require each agency that allows Low Income Housing Tax Credits ("LIHTCs") to adopt a Qualified Allocation Plan ("QAP"). The New York State Housing Finance Agency's (the "Agency") QAP currently applies to: (i) the Agency's allocation of LIHTC, as a sub-allocating agency under Executive Order No. 135, issued by the Governor Cuomo on February 27, 1990 and continued by Governor Spitzer's Executive Order No. 5, issued January 1, 2007 and by Part 2040 of Title 9 of the New York Official Compilation of Codes, Rules and Regulations; and (ii) the allowance by the Agency of LIHTC to projects financed by obligations subject to the Private Activity Bond Cap, the interest on which is exempt from federal income tax, as provided in IRC § 42(h)(4) ("Private Activity Bond Credits").

The Agency has typically allocated LIHTCs to projects that receive financing from the Agency, whether in the form of Private Activity Bond Credits or LIHTCs subject to the State Credit Ceiling. Under the Agency's current QAP, allocations and allowances of LIHTCs are made as part of

the Agency's overall financing process for residential rental projects located in New York State. No provision is made for an application procedure for projects which may seek no other form of financing other than LIHTCs from the Agency.

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

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

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

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

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

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

(4) In accordance with Code Section 42(m)(2)(D), the issuer of the tax exempt bonds financing a project is responsible for determining the dollar amount of LIHTCs which is necessary for the financial feasibility of such project and its viability as a qualified low-income housing project pursuant to Section 42(g)(1) of the Code throughout the applicable credit period. Such determination must be included in the applicant's request to the Agency for a final allocation of credit. The Agency will process requests for a final allocation of credit within 60 days after the date of receipt of all required documentation including an executed credit regulatory agreement in a form satisfactory to the Agency with proof of recording. The Agency will apply the criteria for Feasibility Review and LIHTC Underwriting, as described herein at § 2188.5(i), in determining the amount for the final credit allocation with respect to such project.

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

Additional Sections of the QAP have been amended to apply its provisions to projects financed by an Other Issuer's Private Activity Bonds. To

view the amendments to the QAP in their entirety, a PDF document is available at the Agencies website.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in section 2188.7(h).

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

Revised Regulatory Impact Statement

The Agency is submitting a non-substantive amendment to its proposed rule. SAPA Section 202-bb.8.(iii) requires that, Each agency shall issue a revised rural area flexibility analysis when there are no substantial revisions in the proposed rule but there are changes in the text of the rule as adopted when compared with the text of the latest published version of the proposed rule and such changes would necessitate that such analysis be modified. The changes now being submitted in no way necessitate that the previously submitted analysis be modified.

Revised Regulatory Flexibility Analysis

The Agency is submitting a non-substantive amendment to its proposed rule. SAPA Section 202-b.7.(iii) requires that, Each agency shall issue a revised regulatory flexibility analysis when there are no substantial revisions in the proposed rule but there are changes in the text of the rule as adopted when compared with the text of the latest published version of the proposed rule and such changes would necessitate that such analysis be modified. The changes now being submitted in no way necessitate that the previously submitted analysis be modified.

Revised Rural Area Flexibility Analysis

The Agency is submitting a non-substantive amendment to its proposed rule. SAPA Section 202-bb.8.(iii) requires that, Each agency shall issue a revised rural area flexibility analysis when there are no substantial revisions in the proposed rule but there are changes in the text of the rule as adopted when compared with the text of the latest published version of the proposed rule and such changes would necessitate that such analysis be modified. The changes now being submitted in no way necessitate that the previously submitted analysis be modified.

Revised Job Impact Statement

The Agency is submitting a non-substantive amendment to its proposed rule. SAPA Section 201-a.2.(d)(ii) requires that, An agency shall issue a revised job impact statement when the proposed rule contains any substantial revisions which necessitate such statement be modified. The changes now being submitted are non-substantial and in no way necessitate that the previously submitted statement be modified.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rate/Fee Setting

I.D. No. MRD-08-08-00008-EP

Filing No. 100

Filing date: Feb. 1, 2008

Effective date: Feb. 1, 2008

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

Action taken: Amendment of sections 81.10, 635-10.5, 671.7, 680.12 and 681.14 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Fiscal uncertainties precluded OMRDD from securing necessary control approvals to allow for timely proposal and promulgation of these amendments within

the regular SAPA procedural time frames. The emergency amendments revise the rates/fees of reimbursement of the referenced facilities and services. If OMRDD did not file this emergency adoption and establish the regulatory authority to pay the revised rates and fees effective February 1, 2008, the loss of revenues could have a deleterious effect on the fiscal viability of some providers, especially those which have smaller operations. This potential negative effect could translate into compromised services for citizens with developmental disabilities who need such services.

Subject: Rate/fee setting in voluntary agency operated integrated residential community programs (81.10); individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services (635-10.5); HCBS waiver community residential habilitation services (671.7); specialty hospitals (680.12); and intermediate care facilities for persons with developmental disabilities (681.14).

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective Feb. 1, 2008.

Public hearing(s) will be held at: 10:30 a.m., April 7, 2008* at Office of Mental Retardation and Developmental Disabilities, Counsel's Office Conference Rm., 44 Holland Ave., 3rd Fl., Albany, NY; 10:30 a.m., April 8, 2008 at Office of Mental Retardation and Developmental Disabilities, Counsel's Office Conference Rm., 44 Holland Ave., 3rd Fl., Albany, NY. *Please call OMRDD at (518) 474-1830 no later than Monday, March 31st to indicate that you intend to participate.

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

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

Text of emergency/proposed rule: Paragraph 81.10(b)(4) - Add new subparagraph (iv):

(iv) *Effective February 1, 2008, integrated residential communities shall be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the 2008 fee period. On January 1, 2009, the trend factor for the previous fee period shall be deemed to be the 3.52 percent full annual trend.*

Paragraph 635-10.5(i)(1) - Add new subparagraph (xxvi):

(xxvi) *3.52 percent to trend 2007-2008 costs to 2008-2009. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.*

Note: Rest of paragraph is renumbered accordingly.

Paragraph 635-10.5(i)(2) - Add new subparagraph (xxvi):

(xxvi) *From February 1, 2008 to December 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the fee period. On January 1, 2009, the trend factor for the previous fee period shall be deemed to be the 3.52 percent full annual trend. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.*

Note: Rest of paragraph is renumbered accordingly.

Clause 671.7(a)(1)(vi)(a) - Add new subclause (16):

(16) *For calendar year 2008:*

NYC and Nassau, Rockland,

Suffolk, and Westchester Counties \$ 31.00 per day

Rest of State \$ 30.00 per day

Note: Rest of clause remains unchanged.

Clause 671.7(a)(1)(xvi)(a) - Add new subclause (14):

(14) *0.00 percent from January 1, 2008 through December 31, 2008.*

Clause 671.7(a)(1)(xvi)(b) - Add new subclause (14):

(14) *0.00 percent from July 1, 2008 through June 30, 2009.*

Paragraph 680.12(d)(3) - Add new subparagraph (xxi):

(xxi) *From February 1, 2008 to December 31, 2008, the specialty hospital will be reimbursed operating costs that result in a full annual trend factor of 3.42 percent for the 2008 rate period. On January 1, 2009, the trend factor for the previous rate period shall be deemed to be the 3.42 percent full annual trend.*

Add new subclause 681.14(c)(3)(ii)(b)(8):

(8) If a facility is subject to an expanded desk audit per subclause (2) of this clause, but the desk audit has not been completed by January 1, 2008 or July 1, 2008, OMRDD shall continue the rate established according to the first sentence of subclause (3) of this clause and, if applicable, further trended to 2008 or 2008-2009 dollars until OMRDD completes the expanded desk audit. Upon OMRDD's completion of the expanded desk audit, for the base period and subsequent periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section will apply.

Subparagraphs 681.14(h)(1)(xvii)-(xix) are amended as follows:

- (xvii) 3.03 percent for 2005-2006 to 2006-2007; [and]
- (xviii) 2.97 percent for 2006-2007 to 2007-2008 [.] ; and
- (xix) 3.52 percent for 2007-2008 to 2008-2009.

Subparagraphs 681.14(h)(2)(xvii)-(xix) are amended as follows:

- (xvii) 3.03 percent for 2005 to 2006; [and]
- (xviii) From February 1, 2007 to December 31, 2007, facilities

will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the rate period. On January 1, 2008, the trend factor for the previous rate period shall be deemed to be the 2.97 percent full annual trend[.] ; and

(xix) From February 1, 2008 to December 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the 2008 rate period. On January 1, 2009, the trend factor for the previous rate period shall be deemed to be the 3.52 percent full annual trend.

Subparagraphs 681.14(h)(3)(xxv)-(xxvii) are amended as follows:

- (xxv) 3.03 percent for 2005-2006 to 2006-2007; [and]
- (xxvi) 2.97 percent for 2006-2007 to 2007-2008[.] ; and
- (xxvii) 3.52 percent for 2007-2008 to 2008-2009.

Subparagraphs 681.14(h)(4)(xxv)-(xxvii) are amended as follows:

- (xxv) 3.03 percent for 2005 to 2006; [and]
- (xxvi) From February 1, 2007 to December 31, 2007, facilities

will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the rate period. On January 1, 2008, the trend factor for the previous rate period shall be deemed to be the 2.97 percent full annual trend[.] ; and

(xxvii) From February 1, 2008 to December 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the 2008 rate period. On January 1, 2009, the trend factor for the previous rate period shall be deemed to be the 3.52 percent full annual trend.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 30, 2008.

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

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

Public comment will be received until: five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

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

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

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

2. Legislative Objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The enactment of these emergency/

proposed amendments will ensure the funding to voluntary agency providers of the following services:

a. Programs authorized by OMRDD to operate as integrated residential communities (amendments to section 81.10).

b. Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5).

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

d. Specialty Hospitals (amendments to section 680.12).

e. Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD) (amendments to section 681.14).

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

3. Needs and Benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for the above referenced facilities and services. Such funding is intended to assure the continued delivery of services to persons with developmental disabilities. The emergency/proposed amendments are concerned with identifying the respective trend factors applicable to these facilities and services, effective February 1, 2008.

Fiscal uncertainties precluded OMRDD from securing necessary control agency approval to allow for previous proposal and timely promulgation of these amendments within the regular SAPA procedural time frames. The loss of revenues, if OMRDD did not file this Emergency/Proposed Agency Action and establish the regulatory authority to reimburse providers of the above referenced facilities and services at revised rates/fees beginning February 1, 2008, could have a negative effect on the fiscal viability of some providers, especially those which have smaller operations. This potentially negative effect could translate into compromised services for citizens with developmental disabilities.

4. Costs:

a. Costs to the Agency and to the State and its local governments. The annualized aggregate cost of the application of the trend factors contained in the emergency/proposed amendments is approximately \$100.3 million. This represents approximately \$50.15 million in State funds and \$50.15 million in federal funds.

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

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

For the two programs currently certified by OMRDD as integrated residential communities (amendments to section 81.10). The estimated cost to the State of the proposed 3.52 percent trend factor on an annualized basis will be approximately \$ 33,000. There is no federal or local government share associated with this cost.

For Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite, and prevocational services for the approximately 60,000 persons receiving such services as of December 2007.

The emergency/proposed amendments implement a trend factor of 3.52 percent. The estimated cost for implementation of the trend factor contained in the emergency/proposed amendments on an annualized aggregate basis is approximately \$78.3 million for the fee periods beginning January 1, 2008 and July 1, 2008. This represents approximately \$39.15 million in State share and \$39.15 million in federal funds. There are no costs to local governments as a result of these amendments.

For Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which are providing services to approximately 530 persons as of December 2007. The emergency/proposed amendments implement a trend factor of zero percent. There are therefore no costs attributable to this amendment, either to the State or to local governments.

The amendments to section 671.7 also update the SSI per diem allowances consistent with levels determined by the Federal Social Security

Administration. There are no additional costs attributable to this conforming amendment, either to the State or to local governments.

For Specialty Hospitals (amendments to section 680.12). New York State funds the one such facility currently in operation. The emergency/proposed amendments implement a trend factor of 3.42 percent. The estimated total cost for implementation of this trend factor on an annualized aggregate basis is approximately \$588,000 for the period beginning January 1, 2008. This represents approximately \$294,000 in State share and \$294,000 in federal funds. There are no costs to local governments as a result of the amendments.

For Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2007, there were approximately 5,780 people served in ICF/DD facilities in New York State. The emergency/proposed amendments implement a trend factor of 3.52 percent. The estimated cost for implementation of the trend factor contained in the emergency/proposed amendments on an annualized aggregate basis is approximately \$21.4 million for the rate periods beginning January 1, 2008 and July 1, 2008. This represents approximately \$10.7 million in State share and \$10.7 million in federal funds. There are no costs to local governments resulting from emergency/proposed amendments to section 681.14.

In all instances, these estimated cost impacts have been derived by applying the trend factor provisions of the emergency/proposed amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of December, 2007.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency/proposed amendments are necessary to implement funding of the above cited facilities at revised levels of reimbursement in effect as of February 1, 2008. To the extent that the amendments provide trend factor increases to the providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

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

6. Paperwork: No additional paperwork will be required by the emergency/proposed amendments.

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

8. Alternatives: The current course of action as embodied in these emergency/proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these trend factors were considered. There is no alternative to emergency adoption that would allow for prompt, timely implementation of the trend factor provisions contained in the emergency/proposed amendments.

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

10. Compliance Schedule: The emergency rule is effective February 1, 2008. OMRDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. The emergency/proposed amendments are concerned with revising the various reimbursement methodologies to implement trend factor adjustments for facilities and providers of services to persons with developmental disabilities. These amendments do not impose any significant new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

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

Programs certified by OMRDD as integrated residential communities (amendments to section 81.10). As of December 2007, there were only two such programs authorized by OMRDD to operate as integrated residential communities.

Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite and prevocational services for the approximately 60,000 persons receiving such services as of December 2007.

Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). As of December 2007, OMRDD funds voluntary operated community residence facilities which serve approximately 530 persons.

Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2007, there were approximately 5,780 people served in ICF/DD facilities in New York State.

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

There is only one Specialty Hospital (amendments to section 680.12) certified to operate in New York State. It employs more than 100 persons and would therefore not be considered a small business as contemplated under the State Administrative Procedure Act (SAPA).

The emergency/proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the emergency/proposed amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements. In fact, the provisions contained in the emergency/proposed amendments will either have no fiscal impact, or they will provide for increased reimbursements to small business providers of services, due to the application of the trend factors established by the amendments. Specific impacts of the increased funding are set forth in the accompanying Regulatory Impact Statement as costs to State and Federal government.

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

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these emergency/proposed amendments.

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

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these emergency/proposed amendments. OMRDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, since the emergency/proposed rule requires no compliance effort on the part of the regulated service providers (most of which could be considered as small businesses under SAPA), OMRDD does not, at this time, contemplate the development of any such small business regulation guide.

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

6. Minimizing adverse impact: The purpose of these emergency/proposed amendments is to allow OMRDD to reimburse providers of the referenced services at revised levels in effect as of February 1, 2008. Specifically, these amendments establish trend factor adjustments for the regulations governing the reimbursement of the referenced facilities/services for the rate/fee periods beginning January 1, 2008 and July 1, 2008. The trend factor provisions will either have no impact on funding of small business providers of services, or will have positive impacts resulting from increased reimbursements to the providers.

As previously stated, the emergency/proposed amendments will have no fiscal impact on local governments due to the implementation of the trend factors.

These amendments impose no adverse economic impact on regulated parties or local governments. Therefore, regulatory approaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

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

In addition, OMRDD is required to hold public hearings only on those amendments to section 671.7 as they may affect reimbursement of the room and board components of the community residence fees. However, it has been OMRDD's longstanding practice to enlarge the scope of these scheduled public hearings so as to include all of the emergency/proposed amendments contained in this rule making, as well as to provide an opportunity to comment on any aspect of the various rate and fee setting methodologies. These hearings are scheduled to be held on April 7, 2008 (OMRDD, 44 Holland Avenue) and April 8, 2008 (OMRDD, 44 Holland Avenue), according to the specifications contained in the Notice for this rule making.

Rural Area Flexibility Analysis

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

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with providing revisions to the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments establish trend factors to be applied within the context of reimbursement methodologies for the various facility/program types. These trend factor increases are not expected to result in changes in reimbursements significant enough to affect staffing patterns within the regulated facilities or programs. They will not have any adverse impacts on jobs or employment opportunities in New York State.

Niagara Falls Water Board

NOTICE OF ADOPTION

Regulation of Water and Wastewater Treatment and Distribution System in Niagara Falls

I.D. No. NFW-44-07-00041-A
Filing No. 102
Filing date: Feb. 4, 2008
Effective date: Feb. 20, 2008

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

Action taken: Amendment of Part 1960 of Title 21 NYCRR.
Statutory authority: Public Authorities Law, section 1230-f

Subject: Regulation of water and wastewater treatment and distribution system in Niagara Falls.

Purpose: To regulate non-storm water discharges to the MS4.

Text or summary was published in the notice of proposed rule making, I.D. No. NFW-44-07-00041-P, Issue of October 31, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Gerald Grose, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 283-9770, e-mail: ggrose@nfwb.org

Assessment of Public Comment

No changes.

Public Service Commission

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

Commission Requirements for Verizon New York Inc.

I.D. No. PSC-08-08-00014-P

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

Proposed action: The New York Public Service Commission (commission) is considering whether to approve or reject, in whole or in part or modify, a petition of Verizon New York Inc. (Verizon) to eliminate intraLATA equal access scripting requirements.

Statutory authority: Public Service Law, sections 91(1)(3) and 94(2)

Subject: Commission requirements for Verizon New York Inc.

Purpose: To consider whether to allow Verizon New York Inc. to eliminate the intraLATA equal access scripting requirements.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Verizon New York Inc. (Verizon) to eliminate the equal access scripting requirements it adopted in 1995 when it first implemented IntraLATA Toll Presubscription (ILP). New York Telephone Company (now Verizon) was previously directed to provide, subject to certain interim procedures, ILP to interexchange carriers. The Commission mandated that Verizon inform customers establishing exchange service of their right to select among intraLATA toll providers and identify the interexchange carriers participating in ILP.

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

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

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

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

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

(08-C-0063SA1)

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

Submetering of Electricity by Bay City Metering Company, Inc. on behalf of The O'Connor Group

I.D. No. PSC-08-08-00015-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bay City

Metering Company, Inc., on behalf of The O'Connor Group, to submeter electricity at 200 E. 66th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Bay City Metering Company, Inc., on behalf of The O'Connor Group, to submeter electricity at 200 E. 66th St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bay City Metering Company, Inc., on behalf of The O'Connor Group, to submeter electricity at 200 East 66th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(08-E-0070SA1)

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

Transfer of Ownership by Entergy Nuclear Fitzpatrick LLC, et al.

I.D. No. PSC-08-08-00016-P

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

Proposed action: In a petition dated Jan. 28, 2008, Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 2 LLC, Entergy Nuclear Indian Point 3 LLC, Entergy Nuclear Operations, Inc., Entergy Corporation (collectively, Entergy) and NewCo request approval of the transfer of ownership of the Fitzpatrick, Indian Point 2, and Indian Point 3 nuclear generation and related facilities from Entergy to NewCo, and approval of a financing related to the transaction in the amount of \$4.5 billion.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Transfer and financing of the Fitzpatrick, Indian Point 2, and Indian Point 3 nuclear generation and related facilities.

Purpose: To consider the transfer and financing of the Fitzpatrick, Indian Point 2, and Indian Point 3 nuclear generation and related facilities.

Substance of proposed rule: In a petition dated Jan. 28, 2008, Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 2 LLC, Entergy Nuclear Indian Point 3 LLC, Entergy Nuclear Operations, Inc., Entergy Corporation (collectively, Entergy) and NewCo request approval of the transfer of ownership of the Fitzpatrick, Indian Point 2, and Indian Point 3 nuclear generation and related facilities from Entergy to NewCo, and approval of a financing related to the transaction in the amount of \$4.5 billion. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(08-E-0077SA1)

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

Submetering of Electricity by 147 Flatbush Ave, LLC

I.D. No. PSC-08-08-00017-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 147 Flatbush Ave, LLC to submeter electricity at 306 Gold St., Brooklyn, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 147 Flatbush Ave, LLC to submeter electricity at 306 Gold St., Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 147 Flatbush Ave, LLC to submeter electricity at 306 Gold Street, Brooklyn, New York.

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

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

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

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

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

(08-E-0080SA1)

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

Mini Rate Filing by the Village of Akron

I.D. No. PSC-08-08-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by the Village of Akron to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 1—Electricity, to become effective July 1, 2008.

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

Subject: Mini rate filing.

Purpose: To increase annual electric revenues by approximately \$300,000 or 28 percent.

Substance of proposed rule: The Commission is considering the Village of Akron's (Akron) request to increase its annual electric revenues by approximately \$300,000 or 28%. The proposed filing has an effective date of July 1, 2008. The Commission may approve, reject or modify, in whole or in part, Akron's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-E-0088SA1)

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

Transfer of Property by KeySpan Energy Delivery of New York

I.D. No. PSC-08-08-00019-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, a filing made by KeySpan Energy Delivery of New York for approval of the transfer of certain property located at 809-873 Neptune Ave. to Steel Arrow, LLC and all other related matters.

Statutory authority: Public Service Law, section 70

Subject: Approval of the transfer of property.

Purpose: To consider a filing of KeySpan Energy Delivery of New York to sell property to Steel Arrow, LLC and all other related matters.

Substance of proposed rule: The Commission is considering whether to approve, reject, or modify a filing by KeySpan Energy Delivery New York for Approval of the Transfer of Facilities Under Section 70 of the Public Service Law, to sell a building and property located at 809-873 Neptune Avenue, Brooklyn, New York to Steel Arrow, LLC and all other related matters.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-G-0071SA1)

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

Application Information Requirements by Hudson Transmission Partners LLC

I.D. No. PSC-08-08-00020-P

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

Proposed action: The commission will determine whether to waive some of the application information requirements applicable to the Hudson Transmission Partners LLC's proposed electric transmission facility.

Statutory authority: Public Service Law, art. VII, section 122

Subject: The commission will determine the terms and conditions for granting a certificate of environmental compatibility and public need for a transmission facility located between Ridgefield, NJ and W. 49th St. in Manhattan, NY.

Purpose: To determine the form of the application that should be prescribed for the proposed transmission facility by either granting or denying the applicant's request for waivers.

Substance of proposed rule: On January 15, 2008, the Hudson Transmission Partners, LLC filed an application for a Certificate of Environmental Compatibility and Public Need for a transmission facility that it will construct and operate between Ridgefield, New Jersey and West 49th

Street in Manhattan, New York. The applicant has requested that the Commission waive several information requirements otherwise required for the submission of the Hudson Transmission Partners LLC's electric transmission facility application. The Commission will decide whether or not to grant the request to waive some of the filing requirements.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-T-0034SA1)

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

Rehearing of Cable Television Franchise (Town of Ossining) by Verizon New York Inc.

I.D. No. PSC-08-08-00021-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 whether to approve or reject, in whole or in part, the petition of rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Town of Ossining, Westchester County, concerning audits and inspection of records.

Statutory authority: Public Service Law, section 222(1) and (4)

Subject: Petition for rehearing regarding audits and record inspections.

Purpose: To consider the petition for rehearing by Verizon.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the Petition for Rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Town of Ossining, Westchester County, concerning audits and inspection of records.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-V-1523SA1)

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

Rehearing of Cable Television Franchise (Briarcliff Manor) by Verizon New York Inc.

I.D. No. PSC-08-08-00022-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 whether to approve or reject, in whole or in part, the petition of rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Vil-

lage of Briarcliff Manor, Westchester County, concerning audits and inspection of records.

Statutory authority: Public Service Law, section 222(1) and (4)

Subject: Petition for rehearing regarding audits and record inspections.

Purpose: To consider the petition for rehearing by Verizon.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the Petition for Rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Village of Briarcliff Manor, Westchester County, concerning audits and inspection of records.

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

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

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

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

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

(07-V-1524SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing of Cable Television Franchise (Village of Sleepy Hollow) by Verizon New York Inc.

I.D. No. PSC-08-08-00023-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 whether to approve or reject, in whole or in part, the petition of rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Village of Sleepy Hollow, Westchester County, concerning audits and inspection of records.

Statutory authority: Public Service Law, section 222(1) and (4)

Subject: Petition for rehearing regarding audits and record inspections.

Purpose: To consider the petition for rehearing by Verizon.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the Petition for Rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Village of Sleepy Hollow, Westchester County, concerning audits and inspection of records.

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

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

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

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

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

(07-V-1525SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing of Cable Television Franchise (Village of Ossining) by Verizon New York Inc.

I.D. No. PSC-08-08-00024-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 whether to approve or reject, in whole or in part, the petition of rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Village of Ossining, Westchester County, concerning audits and inspection of records.

Statutory authority: Public Service Law, section 222(1) and (4)

Subject: Petition for rehearing regarding audits and record inspections.

Purpose: To consider the petition for rehearing by Verizon.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the Petition for Rehearing filed by Verizon New York Inc. (Verizon) regarding its cable television franchise with the Village of Ossining, Westchester County, concerning audits and inspection of records.

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

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

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

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

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

(08-V-0005SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Top O' The World Water Co., Inc.

I.D. No. PSC-08-08-00025-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Top O' The World Water Co., Inc. to make various changes in the rates, charges, rules and regulations in its tariff schedule, P.S.C. No. 3—Water, to become effective June 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 Top O' The World Water Co., Inc.'s annual revenues by about \$29,973 or 132 percent.

Substance of proposed rule: On January 30, 2008, Top O' The World Water Co., Inc. (TOTW or the company) filed, to become effective on June 1, 2008, tariff amendments (Leaf No. 12, Revision 1) to its electronic tariff schedule P.S.C. No. 3—Water. The company has filed new rates to produce additional annual revenues of about \$29,973 or 132%. The company provides metered water service to approximately 69 residential and 2 commercial customers in the Town of Queensbury, Warren County. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under File Room—Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-W-0081SA1)

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

Rehearing of Cable Television Franchise (Town of Fallsburg) by Time Warner Cable LLC d/b/a Time Warner Cable

I.D. No. PSC-08-08-00026-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 whether to approve or reject, in whole or in part, the petition filed by Time Warner Cable LLC, d/b/a Time Warner Cable (Time Warner) for rehearing of the commission’s order, issued Dec. 27, 2007, regarding a cable television franchise with the Town of Fallsburg, Sullivan County. The commission is also considering granted a waiver of the rule regarding franchise fees.

Statutory authority: Public Service Law, sections 216(1), 222(1) and (3)

Subject: Time Warner’s petition for rehearing of order on franchise fees and term franchise and waiver of franchise fee rule.

Purpose: To consider the petition for rehearing and waiver.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the petition filed by Time Warner Cable LLC, d/b/a Time Warner Cable (Time Warner) for rehearing of the Commission’s order, issued December 27, 2007, regarding the cable television franchise with the Town of Fallsburg, Sullivan County. The Commission is also considering granting a waiver of a rule regarding franchise fees.

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

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

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

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

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

(01-V-0201SA1)

Racing and Wagering Board

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

Licensing and Standards for Totalisator Companies

I.D. No. RWB-32-07-00013-RP

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

Revised action: Addition of Part 5100 to Title 9 NYCRR.

Statutory authority: Racing, Part-Mutuel Wagering and Breeding Law, sections 101, 227, 301, 305, 401, 405, 520 and 1002

Subject: Establishment of licensing and standards for totalisator companies involved in part-mutuel activities offered in the State of New York, particularly as they relate to accountability, operations and reporting.

Purpose: To ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for totalisator companies.

Substance of revised rule: Subchapter B of Chapter II of Subtitle T of Title 9 of the New York Code of Rules and Regulations is renumbered as Subchapter C, and new Subchapter B is added to read as follows:

Subchapter B

Totalisator Systems

5100.1 Definitions, including the definition of a “totalisator system” as a “computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.”

5100.2 Requires authorized pari-mutuel wagering entities to utilize a Board-approved totalisator system.

5100.3 Requires mutuel managers of totalisator companies to produce certain records upon request by the board.

5100.4 Prescribes notification procedures in the event of a tote system failure.

5100.5 Requires a storage plan for magnetic media of a tote system.

5100.6 Requires a board-issued license to provide totalisator services.

5100.7 Requires a board-issued license to provide simulcast services.

5100.8 Reserved.

5100.9 Requires tote companies to provide certain information to the public regarding pari-mutuel wagering and wagering pools.

5100.10 Requires pari-mutuel wagering entities to post accurate wagering information.

5100.11 Requires board-approved plans for posting race results of live and simulcast race results.

5100.12 Requires certain information on printed pari-mutuel tickets, and recordkeeping.

5100.13 Requires certain information on printed vouchers, except special vouchers.

5100.14 Establishes April 1 as the annual expiration date for pari-mutuel tickets.

5100.15 Prohibits pari-mutuel wagering entities from cashing pari-mutuel tickets under certain circumstances.

5100.16 Establishes procedure for accepting a claim for payment for certain pari-mutuel tickets that are not redeemed.

5100.17 Requires pari-mutuel entities to properly store cashed tickets and vouchers.

5100.18 Requires pari-mutuel entities to deface or otherwise mark tickets and vouchers that have been cashed.

5100.19 Defines an “outstanding pari-mutuel ticket” and prescribes procedures for accepting and processing such tickets.

5100.20 Requires totalisator systems to have restrictions on ticket and voucher cancellations.

5100.21 Requires pari-mutuel entities to maintain teller’s records and requires such records be stored for three years.

5100.22 States the regulatory purpose for adopting facility and equipment standards.

5100.23 Establishes facility requirements that house totalisator systems, including utility, fire alarm and communication standards.

5100.24 Establishes hardware requirements for totalisator systems, including cash/sell systems, schematic charts, peripherals, stop wagering devices, tote boards, uninterruptable power supplies, remote access and wagering devices.

5100.25 Establishes software requirements for totalisator systems.

5100.26 Established general management requirements, such as written procedure manuals for tote companies.

5100.27 Establishes personnel requirements regarding staffing, training, and responsibilities.

5100.28 Reserved.

5100.29 Prescribes merger and calculation of common pools at network computing center and prohibits racetracks from accepting tote-to-tote network wagers.

5100.30 Expressly permits any type of data transmission protocol in device-to-toe network; Establishes permissible transmission procedure in event remote site failure.

5100.31 Establishes general requirements for reporting and log keeping of totalisator operations. Requires that tote companies retain certain records for three years.

5100.32 Requires tote companies to print out pre-race reports, and requires certain information in such reports regarding system initialization, configuration parameters, race information, odds report, and wagering device report.

5100.33 Requires tote companies to be able to print out race-by-race reports, and requires certain information in such reports regarding scratches, betting, calculating price, probable payout, scan report for multi-leg pools, race summary, and daily summary.

5100.34 Requires tote companies to be able to print out at the end of the day a balance report, a wagering summary report, a system balance report, a money room balance report and an IRS report.

5100.35 Requires that tote companies produce, within 72 hours of a request by the Board, a special report which may require information on odds progression, ticket history, terminal history, outstanding uncashed tickets, outstanding tickets cashed, manually cashed tickets, cancelled tickets, network balance, tell inquiry, wagering, account history, inter-track wagering, ticket history and terminal history.

5100.36 Reserved.

5100.37 Requires tote companies to maintain the following printed logs: teller/machine history log, ticket history log, user terminal log, system error log, account history log, and off-line log.

Revised rule compared with proposed rule: Substantial revisions were made in sections 5100.4(d), 5100.18, 5100.23(c), 5100.24(d)(1), (2), 5100.29(b), 5100.30(c) and 5100.35(a)(10).

Text of revised proposed rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

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

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

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

Due to the limited scope of the substantive changes -- and as is apparent from the nature of the revisions -- there is no need for revised regulatory impact statement, a revised regulatory flexibility analysis, revised rural area flexibility analysis, or a revised job impact statement. In general, there are three types of changes which 1) distinguish certain duties of regulated parties that may have appeared unclear in the original rule text, 2) clarify how conflicts of law or rule will be handled, and 3) make technical amendments to clarify the rule. These revisions will not have an impact on jobs, small businesses, local governments or rural areas. These revisions will not expand the restrictions and requirements of the original proposed rulemaking.

In reference to sections 5100.29(b) [Totalisator Network] and 5100.30(c) [Data transmission protocols], the revised rule text states that the respective rules on manual merges and will yield to statutory or regulatory requirements that may conflict with those rules, and that the Board must approve the procedure if it is in conflict with Board's rule. This would not pose any new impact or burden on regulated parties since the Board regularly exercises its discretion in resolving regulatory matters that involve compliance with federal and state laws or rules that exist outside of the Racing, Pari-Mutuel Wagering and Breeding Laws and rules. These revisions merely clarify how such matters would be resolved if the revised rule conflicts with another law or rule.

In reference to sections 5100.24(d)(1) and (2) [Hardware Requirement for Stop Wagering devices], and section 5100.35(a)(10) [Special Reports], the revised rule clarifies that the respective requirements are applicable only to the host racetrack, and not to any other entity in the totalisator network. These revisions clarify the original intent of the Board as reflected in the proposed rulemaking that was published in August, and were considered when preparing the previous RIS, RAFA, RFA and JIS.

Technical amendments include changes to sections 5100.4(d), 5100.18, and 5100.23(c). Section 5100.4(d) [System Failure] is added to specify the location of a communication loss which will require actions by the totalisator operator. Section 5100.18 [Altering cashed pari-mutuel tickets and cashed vouchers] is amended to repeal the word "altered" from the body of the rule text and add the words "branded or marked" in order to specify the type of alteration required. It was determined that the term "altered" was too vague, and may include less reliable means of alterations other than branded or marked. Section 5100.23(c) [Facility Requirements] is amended by adding a new subdivision (c) to clarify the totalisator room requirements of subdivision (a) and (b) of the same section by limiting the requirements to communications equipment, the operator's terminal and equipment necessary to process transactions.

Assessment of Public Comment

The Board received comments from Ed Martin, President and Chief Executive Officer of the Association of Racing Commissioners International; a racing association; and Jeffery B. Murphy, Director of Field Operations for Scientific Games Racing, LLC, a company that currently provides totalisator services to Yonkers Raceway, Monticello Gaming and Raceway, Saratoga Gaming and Raceway, Catskill OTB, Suffolk OTB and Nassau OTB.

Mr. Martin's comments on behalf of the ARCI supported the proposed amendments as written. Nevertheless, from an enforcement perspective, Mr. Martin suggested the Board incorporate a standard for the required independent monitoring system. Mr. Martin suggested a broad interpretation of the licensing requirements to include tote companies that operate out of state, but transmit data and monies into New York wagering pools. He did not seek any changes to the text of Part 5100.

Seven recommendations and observations were received from an authorized pari-mutuel wagering entity. The Board made three revisions based upon these comments, which are noted below with the respective comments.

Citing section 5100.18, which pertains to altering cashed pari-mutuel tickets and cashed vouchers, it was pointed out that manually cashed tickets and vouchers are not branded. The Board determined that no change is needed because manual marking of those tickets would be compliant with 5100.18. In reviewing the section, the Board decided to revise the text of 5100.18 from "altered" to "branded or marked."

Citing section 5100.19, it was proposed to eliminate this provision, which provides for controls on cashing outstanding tickets (which are defined to be at least 10 days after the race and valued at \$300 or more.) The Board reviewed this section and determined that the provision should remain as written as it serves the purpose of a significant control to prevent the "raiding of outs," which is the practice of unauthorized cashing of unclaimed tickets.

Citing section 5100.20, which pertains to cancellation of wagers, it was pointed out that vouchers are "locked" rather than "cancelled". The Board reviewed this section in light of this comment, and determined that no change is necessary made because the ticket can still be locked out using the existing language.

Citing section 5100.24(d)(2), which pertains to stop wagering devices activated by race officials, modification was requested to permit the continued use of the described "warble" system. The Board determined that no change should be made because the "warble" system can still be used. The Board notes that the "warble" system is only a notification system, and not a stop wagering device as required by section 5100.24(d)(2).

Citing section 5100.24(l), which pertains to independent monitoring systems, issues were pointed out based on experience with a specific system and suggested (without specificity) a different solution is needed. The Board determined that no specific system is required to accomplish the objective; the system to be employed must meet certain standards and be approved by the Board.

Citing section 5100.29(b), which pertains to the prohibition of accepting wagers from remote sites, it was pointed out that the "double hop" prohibition may be violative of requirements in certain states. The Board considered this comment and revised the text to add the language "unless specifically required by law or regulation and approved by the board" at the end of 5100.29(b).

Citing section 5100.30(c), which pertains to data transmission protocols, it was pointed out that this appears to make manual merges acceptable in contrast to the general rule. In response, the Board added a new third sentence to read: "Such manual merges are prohibited unless required specifically by law or regulation and approved by the Board."

Mr. Murphy submitted eight comments and observations on behalf of Scientific Games. The Board made four revisions based upon his comments.

Citing 5100.4(d), which pertains to system failure of a totalisator system, Mr. Murphy states that a tote operator can only verify stop betting at a New York host site and cannot verify at a remote site. The Board determined that verification can be made by other than ITSP link. The Board did, however, revise the text for clarification by inserting the language "at the authorized pari-mutuel wagering entity" so the first sentence now reads: "If the totalisator at the authorized pari-mutuel wagering entity loses communication with one or more sites the totalisator operator shall make an assessment to determine if communication can be reestablished before the start and/or end of the race(s)."

Citing 5100.23(a), which pertains to the facility requirements of the totalisator room, Mr. Murphy seeks provision for the central processing equipment to be housed off-site. The Board determined that a revision was necessary to accommodate this comment. The Board revised existing subsection (c) to (d), and inserted a new (c) to read: "If an authorized pari-mutuel wagering entity contracts with a totalisator service in accordance with paragraph b of this section, the requirements of paragraph a shall be limited to the communications equipment and operators terminal, and any other equipment necessary to process transactions."

Citing 5100.24(d), which pertains to hardware requirements, Mr. Murphy points out that the stop wagering devices are at the host tracks. The Board revised paragraph (1) and (2) and of subsection (d) to include the following language at the end of each paragraph: "This requirement is applicable only to a host racetrack."

Citing 5100.24(e), which pertains to the tote board, Mr. Murphy questions whether an infield tote board is necessary for live racing. The Board determined that no change is needed to the rule text. This provision does not require an infield tote board. It relates to the function of a tote board. An infield tote board is currently addressed in the rules governing the conduct of wagering on racing conducted in New York State.

Citing 5100.24(g)(5), which prohibits a wagering device in a totalisator room, Mr. Murphy seeks modification to allow wagering devices in the tote room or immediate vicinity to allow for testing. The Board decided to no revision should be made. This provision is a necessary control and other arrangements can be made for testing.

Citing 5100.25(a)(5), which requires an audio recording device for telephone wagering transactions, Mr. Murphy seeks to transfer responsibility for the recording system from the vendor to the pari-mutuel wagering entity. The Board determined that the responsibility is properly placed with the vendor. The wagering entity is responsible to contract for the service and verify that it is in place.

Citing 5100.31, which pertains to the general requirement of a totalisator system, Mr. Murphy seeks specificity as to hardcopy or electronic reports/logs. The Board determined no change is needed. The system must have the capability to produce either. Any request would specify the format for production.

Citing 5100.35 (a)(10), which pertains to wagering reports for multi-leg pools over four legs, Mr. Murphy points out that the report is not available from remote sites for certain pools. In response, the Board added text at end of this paragraph to read, "This requirement is applicable only to a host racetrack."

Text of emergency rule: Section 1106.1 (Appraisal Standards) of Title 19 of the NYCRR is amended to read as follows:

§ 1106.1 Appraisal standards.

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2006] 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice:

- (1) Definitions;
- (2) Preamble;
- (3) Ethics rule;
- (4) Competency rule;
- (5) [Departure rule] *Scope of Work Rule*;
- (6) Jurisdictional exception rule;
- (7) [Supplemental standard rule];
- (8) Standard 1–Real Property Appraisal, Development;
- [(9)] (8) Standard 2–Real Property Appraisal, Reporting;
- [(10)] (9) Standard 3–[Real Property and Personal Property] Appraisal Review, Development and Reporting;
- [(11)] (10) Standard 4–Real Property Appraisal Consulting, Development;
- [(12)] (11) Standard 5–Real Property Appraisal Consulting, Reporting; and
- [(13)] (12) Standard 6–Mass Appraisal, Development and Reporting.

- (13) *Standard 7- Personal Property Appraisal, Development*
- (14) *Standard 8- Personal Property Appraisal, Reporting*
- (15) *Standard 9-Business Appraisal, Development*
- (16) *Standard 10-Business Appraisal, Reporting*

(b) The [2006] 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from:

The Appraisal Foundation
1029 Vermont Avenue, NW, Suite 900
Washington D.C. 20005
tel: 202-347-7722
www.appraisalfoundation.org

The [2006] 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from <http://www.appraisalfoundation.org/html/USPAP2006/toc.htm>

Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services
N.Y.S. Department of State
[84 Holland Avenue] *Alfred E. Smith State Office Building*
80 South Swan Street
P.O. Box 22001
Albany NY [12208] 12231-0001
tel: 518-473-2728
Division of Licensing Services
N.Y.S. Department of State
656 Court Street
Buffalo NY 14202
tel: 716-847-7110
Division of Licensing Services
N.Y.S. Department of State
123 William St.
New York NY 10038
tel: 212-417-5747
Division of Licensing Services
N.Y.S. Department of State
250 Veterans Memorial Highway
Hauppauge NY 11788
tel: 631-952-6579

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 29, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Whitney A. Clark, Department of State, 41 State St., Albany, NY 12231, (518) 473-2728, e-mail: whitney.clark@dos.state.ny.us

Regulatory Impact Statement

- 1. Statutory authority:

Department of State

EMERGENCY RULE MAKING

Uniform Standards of Professional Appraisal Practice

I.D. No. DOS-08-08-00004-E

Filing No. 96

Filing date: Jan. 31, 2008

Effective date: Jan. 31, 2008

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

Action taken: Amendment of section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

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

Specific reasons underlying the finding of necessity: The Federal Appraisal Qualification Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recover and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. State are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

On a bi-annual basis, the AQB adopts an updated version of the Uniform Standards of Professional Appraisal Practice (USPAP). States are required to adopt the most recent version of USPAP. New York State, in accordance with this requirement has adopted prior versions of USPAP. The AQB recently adopted the 2008-2009 version of USPAP. Public interest necessitates this rule making, not only because of the AQB mandate, but because public protection requires that appraisers follow the most current standards applicable to their industry.

Subject: Uniform standards of professional appraisal practice.

Purpose: To adopt the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice.

Executive Law section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers utilize certain minimum standards in preparing and communicating appraisal reports. To meet this purpose, the Department of State, in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Part 1106 of Title 19 NYCRR and is proposing this rule making.

2. Legislative objectives:

Executive Law, Article 6-E, requires the Department of State to license and regulate real estate appraisers. The statute requires licensees to comply with certain minimum standards in preparing and communicating real estate appraisals. This rule making advances the legislative objective by conforming existing regulations with the recently adopted federal standards.

3. Needs and benefits:

The Federal Appraisal Qualifications Board (AQP), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum standards for the preparation and communication of appraisals. States are required to adopt the standards approved by the AQB.

On a bi-annual basis, the AQB adopts updated standards which are codified in the Uniform Standards of Professional Appraisal Practice (USPAP). The AQB recently adopted the 2008-2009 version of USPAP. Public interest necessitates this rule making, not only because of the AQB mandate, but because public protection requires that appraisers follow the most current standards applicable to their industry.

This rule making is necessary to conform the existing education regulations with the adopted AQB standards.

4. Costs:

a. Costs to regulated parties:

The rule making will not impose any new costs on licensees. Insofar as licensees are already required to comply with USPAP, conforming the regulations to adopt the most recent version of USPAP will not result in any additional costs.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local government for the implementation and continuation of the rule.

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 comply with the 2006 version of USPAP, conforming the regulations to adopt the new version of USPAP will not result in additional paperwork requirements.

7. Duplication:

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

8. Alternatives:

No significant alternatives exist to be considered because the Department is required to propose this rule making by Federal mandate.

9. Federal standards:

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 establishes the Appraisal Qualifications Board (AQP) which establishes the minimum standards for real property appraisers to obtain state certification. States are required, by the AQB, to adopt the most recent version of USPAP. This rule making conforms the existing regulations with the required federal standards.

10. Compliance schedule:

Licensees are required to comply with the rule as of the date of filing. Insofar as the AQB adopts a new version of USPAP on an annual or bi-annual basis, and because licensees must receive continuing education on the most recent version of USPAP, the regulated public is aware of the relevant changes effected by this rule making and should be able to comply with the rule on its effective date.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to licensed and certified real estate appraisers. Currently, these licensees are subject to the 2006 edition of the Uniform Standards of Professional Appraisal Practice. The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery

and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

On a bi-annual basis, the AQB adopts an updated version of the Uniform Standards of Professional Appraisal Practice (USPAP). States are required to adopt the most recent version of USPAP. New York State, in accordance with this requirement has adopted prior versions of USPAP. The AQB recently adopted the 2008-2009 version of USPAP. This rule making merely conforms existing regulations to the AQB requirement that New York State adopt the most recent version of USPAP. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

The rule does not apply to local governments.

2. Compliance requirements:

Insofar as the existing licensees are already required to comply with the 2006 edition of USPAP, this rule making, which merely adopts to 2008-2009 version of USPAP, will not add any new reporting, recordkeeping or additional compliance requirements.

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

3. Professional services:

Licensees will not need to rely on any new professional services in order to comply with the rule. Insofar as licensees are already required to comply with the professional standards set forth in the 2006 version of USPAP, conforming the regulations to adopt the most recent version of USPAP will not result in the need to rely on any new professional services.

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

4. Compliance costs:

The rule making will not result in any new compliance costs. Insofar as licensees are already required to comply with the professional standards set forth in the 2006 version of USPAP, conforming the regulations to adopt the most recent version of USPAP will not result in any new compliance costs.

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

5. Economic and technological feasibility:

Since the rule does not provide any new recordkeeping requirements on prospective licensees, it will be technologically feasible for these persons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or recordkeeping requirements on licensees and does not require licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E.

7. Small business participation:

The Department is required to adopt the most recent version of USPAP and, in fact, has adopted prior versions of USPAP. Prior to proposing this and prior versions of the rule, the Department discussed the proposal at numerous public meetings of the New York State Real Estate Appraisal Board, the minutes of which were posted on the Department's website. The public was given an opportunity to issue comments during the public comment period of these meetings. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. 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

A rural flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Licensed and certified real estate appraisers are currently subject to a 2006 edition of the Uniform Standards of Professional Appraisal Practice, which has been revised by the 2008-2009 edition. Accordingly, the adoption of the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice will not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Licensed and certified real estate appraisers are currently subject to a 2006 edition of the Uniform Standards of Professional Appraisal Practice, which has been revised by the 2008-2009 edition. Accordingly, the New

York State Board of Real Estate Appraisal does not believe that adoption of the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.

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

Uniform Standards of Professional Appraisal Practice

I.D. No. DOS-08-08-00005-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 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Uniform Standards of Professional Appraisal Practice.

Purpose: To adopt the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice.

Text of proposed rule: Section 1106.1 (Appraisal Standards) of Title 19 of the NYCRR is amended to read as follows:

§ 1106.1 Appraisal standards.

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2006] 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice:

- (1) Definitions;
- (2) Preamble;
- (3) Ethics rule;
- (4) Competency rule;
- (5) [Departure rule] *Scope of Work Rule*;
- (6) Jurisdictional exception rule;
- (7) [Supplemental standard rule];
- (8) Standard 1—Real Property Appraisal, Development;
- [(9)] (8) Standard 2—Real Property Appraisal, Reporting;
- [(10)] (9) Standard 3—[Real Property and Personal Property] Appraisal Review, Development and Reporting;
- [(11)] (10) Standard 4—Real Property Appraisal Consulting, Development;
- [(12)] (11) Standard 5—Real Property Appraisal Consulting, Reporting; and
- [(13)] (12) Standard 6—Mass Appraisal, Development and Reporting.
- (13) *Standard 7- Personal Property Appraisal, Development*
- (14) *Standard 8- Personal Property Appraisal, Reporting*
- (15) *Standard 9-Business Appraisal, Development*
- (16) *Standard 10-Business Appraisal, Reporting*

(b) The [2006] 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from:

The Appraisal Foundation
1029 Vermont Avenue, NW, Suite 900
Washington D.C. 20005
tel: 202-347-7722
www.appraisalfoundation.org

The [2006] 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from <http://www.appraisalfoundation.org/html/USPAP2006/toc.htm>

Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services
N.Y.S. Department of State
[84 Holland Avenue] *Alfred E. Smith State Office Building*
80 South Swan Street
P.O. Box 22001
Albany NY [12208] 12231-0001
tel: 518-473-2728
Division of Licensing Services
N.Y.S. Department of State
656 Court Street
Buffalo NY 14202
tel: 716-847-7110
Division of Licensing Services
N.Y.S. Department of State

123 William St.
New York NY 10038
tel: 212-417-5747
Division of Licensing Services
N.Y.S. Department of State
250 Veterans Memorial Highway
Hauppauge NY 11788
tel: 631-952-6579

Text of proposed rule and any required statements and analyses may be obtained from: Whitney A. Clark, Department of State, Division of Licensing Services, Alfred E. Smith State Office Bldg., 80 S. Swan St., Albany, NY 12231, (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.

Consensus Rule Making Determination

This rule is being proposed as a consensus rule making. The New York State Board of Real Estate Appraisal does not expect that any person is likely to object to its adoption because the proposed rule merely implements a nondiscretionary statutory direction, i.e., the adoption of these appraisal standards is mandated by § 160(d)(1)(d) of the Executive Law.

Section 160-d(1)(d) of the Executive Law provides, in part, that the New York State Board of Real Estate Appraisal shall adopt standards for the development and communication of real estate appraisals; provided, however, that those standards must, at minimum, conform to the uniform standards of professional appraisal promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Acting pursuant to Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.A. §§ 3310-3351), the Appraisal Standards Board has adopted and, from time to time, amended the Uniform Standards of Professional Appraisal Practice, which set forth national standards for developing an appraisal and for reporting its results. This proposal will adopt the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice relating to real estate appraisals. Since § 160-d(1)(d) directs that the standards adopted by the State Board of Real Estate Appraisal conform, at a minimum, to the standards promulgated by the Appraisal Standards Board, the State Board does not expect that any person is likely to object to the adoption of the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice. The State Board has previously adopted the 2002, 2003, 2005 and the 2006 editions of the Uniform Standards of Professional Appraisal Practice.

Job Impact Statement

Licensed and certified real estate appraisers are currently subject to an 2006 edition of the Uniform Standards of Professional Appraisal Practice, which has been revised by the 2008-2009 edition. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.

**Office of Temporary and
Disability Assistance**

NOTICE OF ADOPTION

Change Regulatory References from “Temporary Assistance” to “Public Assistance”

I.D. No. TDA-43-07-00004-A

Filing No. 106

Filing date: Feb. 5, 2008

Effective date: Feb. 20, 2008

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

Action taken: Amendment of sections 352.8(b)(5) and (c)(1)(ii), 353.23(d), 352.29(h)(2)(v)(a), (b), (c) and (d), 387.17(d)(4) and 393.4(d)(1)(ix) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 2(19), 20(3)(d) and 34(3)(f)

Subject: Change regulatory references from “temporary assistance” to “public assistance.”

Purpose: To change regulatory references from “temporary assistance” to “public assistance” in order to provide consistency between statutory terms and regulatory terms.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-43-07-00004-P, Issue of October 24, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Workers’ Compensation Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pharmacy and Durable Medical Equipment Fee Schedules

I.D. No. WCB-08-08-00010-P

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

Proposed action: Addition of Parts 440 and 442 to Title 12 NYCRR.

Statutory authority: Workers’ Compensation Law, sections 13, 13-o and 117

Subject: Pharmacy and durable medical equipment fee schedules.

Purpose: To adopt pharmacy and durable medical equipment fee schedules.

Substance of proposed rule (Full text is posted at the following website: www.wcb.state.ny.us) Chapter 6 of the Laws of 2007 added Section 13-o to the Workers’ Compensation Law (“WCL”) mandating the Chair to adopt a pharmaceutical fee schedule. WCL Section 13(a) mandates that the Chair shall establish a schedule for charges and fees for medical care and treatment. Part of the treatment listed under Section 13(a) includes medical supplies and devices that are classified as durable medical equipment. The proposed rule adopts a pharmaceutical fee schedule and durable medical equipment fee schedule to comply with the mandates. This rule adds a new Part 440 which sets forth the pharmacy fee schedule and procedures and rules for utilization of the pharmacy fee schedule and a new Part 450 which sets forth the durable medical equipment fee schedule.

Section 440.1 sets forth that the pharmacy fee schedule is applicable to prescription drugs or medicines dispensed on or after the effective date of the regulations.

Section 440.2 provides the definitions for brand name drugs, controlled substances, generic drugs, and rural areas, independent pharmacy, pharmacy chain, remote pharmacy, and third party payor.

Section 440.3 provides that a carrier or self-insured employer may designate pharmacies or pharmacy chains which an injured worker must use to fill prescriptions for work related injuries. This section also sets forth the requirements that a carrier or self-insured employer must follow to notify the Chair with regard to filing a listing of designated pharmacies and pharmacy chains, as well as providing notice of modifications to such designations. This section sets forth the requirements applicable to pharmacies that are designated as part of a pharmacy network at which an injured worker must fill prescriptions including inventory requirements. This section also sets forth the procedures applicable in circumstances where an injured worker is not required to use a designated pharmacy or pharmacy network. This section also provides the reimbursement requirements in the event that a claimant prevails on a controverted claim.

Section 440.4 sets forth the requirements for notifying employees that the carrier or self-insured employer has designated pharmacies or pharmacy chains that the injured worker must use to fill prescriptions. This section provides the information that must be provided in such notice,

including the identity of the pharmacy chains and independent pharmacies in the network (or an entity that can provide such information), time frames for notice and method of delivery as well as notifications of changes in a pharmacy network and the methods of providing notice. This section also provides that carriers or self-insured employers must provide a document such as a pharmacy benefits card to injured workers that lists the carrier or self-insured employer and other contact information regarding the worker’s coverage as well as the pharmacy information such as contact information and website address.

Section 440.5 sets forth the fee schedule for prescription drugs. The fee schedule in uncontroverted cases is equivalent to the New York State Medicaid fee schedule for prescription drugs plus a dispensing fee of five dollars for generic drugs and four dollars for brand name drugs. The fee schedule in controverted cases is twenty-five percent above the New York State Medicaid fee schedule plus a dispensing fee of seven dollars and fifty cents for generic drugs and six dollars for brand-name drugs. This section also provides for adjustments to the fee schedule by the Chair as deemed appropriate in circumstances where the reimbursement amount is grossly inadequate to meet pharmacies costs.

Section 440.6 provides that generic drugs shall be prescribed except as otherwise permitted by law and that billing statements shall include the national drug code number and separate the prices for drugs and dispensing fees.

Section 440.7 sets forth a transition period for injured workers to transfer prescriptions to a designated pharmacy or pharmacy network. Prescriptions for controlled substances must be transferred when all refills for the prescription are exhausted or after ninety days following notification of a designated pharmacy. Non-controlled substances must be transferred to a designated pharmacy when all refills are exhausted or after 60 days following notification.

Section 440.8 sets forth the procedure for payment of prescription bills or reimbursement. A carrier or self-insured employer is required to pay any undisputed bill or portion of a bill and notify the injured worker by certified mail within 45 days of receipt of the bill of the reasons why the bill or portion of the bill is not being paid, or request documentation to determine the self-insured employer’s or carrier’s liability for the bill. If objection to a bill or portion of a bill is not received within 45 days, then the self-insured employer or carrier is deemed to have waived any objection to payment of the bill and must pay the bill. This section also provides that a pharmacy shall not charge an injured worker or third party more than the pharmacy fee schedule when the injured worker pays for prescriptions out-of-pocket, and the worker or third party shall be reimbursed at that rate.

Section 440.9 provides that if an injured worker’s primary language is other than English, that notices required under this part must be in the injured worker’s primary language.

Part 442 sets forth the fee schedule for durable medical equipment.

Section 442.1 sets for that the fee schedule is applicable to durable medical goods and medical and surgical supplies dispensed on or after the effective date of the regulations.

Section 442.2 sets forth the fee schedule for durable medical equipment as indexed to the New York State Medicaid fee schedule. This section also provides for the rate of reimbursement when Medicaid has not established a fee payable for a specific item. This section also provides for adjustments to the fee schedule by the Chair as deemed appropriate in circumstances where the reimbursement amount is grossly inadequate to meet a pharmacy’s or provider’s costs.

Appendix A provides the form for notifying an injured worker that his or her claim has been contested and that the carrier is not required to reimburse for medications while the claim is being contested.

Appendix B provides the form for notification of injured workers that the self-insured employer or carrier has designated a pharmacy that must be used to fill prescriptions.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Special Counsel to the Chair, Workers’ Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: cheryl.wood@wcb.state.ny.us

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

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

Summary of Regulatory Impact Statement

1. Statutory authority: Workers’ Compensation Law (WCL) Section 117 authorizes the Workers’ Compensation Board Chair (Chair) to adopt reasonable rules consistent with the provisions of the WCL. New WCL Section 13-o requires the Chair to adopt a pharmacy fee schedule. New

subdivision (i) of WCL Section 13 requires the adoption of regulations defining the reasonable distance for a claimant to travel to obtain prescriptions. WCL Section 13(a) was amended in 2007 to require the Chair to establish a schedule for medical supplies and devices that are classified as durable medical equipment.

2. Legislative objectives: The proposed regulations provide fee schedules to govern the cost of prescription drugs and medicines (hereinafter prescriptions) and durable medical equipment (DME), and allow carriers and self-insured employers to designate pharmacies from which injured workers must purchase medications, in order to control the cost of workers' compensation insurance.

3. Needs and benefits: Chapter 6 of the Laws of 2007 enacted sweeping reforms of the New York workers' compensation system, including several changes in regard to pharmaceuticals. First, the legislation requires the Chair to adopt a pharmacy fee schedule and a DME fee schedule. Second, it authorizes insurance carriers and self-insured employers to require claimants to obtain prescriptions from pharmacies or pharmacy chains designated by the carrier or self-insured employer. Third, to ensure that claimants do not have to travel long distances to reach a designated pharmacy, WCL Section 13(i) (5) requires a pharmacy location to be within a "reasonable distance" of the claimant if the option of a mail order pharmacy is not available. The term "reasonable distance" is to be defined in regulations. Fourth, new WCL § 13(i)(2) sets forth the time period and process by which bills for prescriptions must be paid.

The purpose of this rule is to comply with the requirements of the legislation. The rule adopts the Medicaid pharmacy and DME fee schedules for workers' compensation. Previously, pharmacies and other providers of DME set the price charged. For prescriptions, the price was usually average wholesale price (AWP) or AWP plus a percentage. Disputes over payments to pharmacies for prescriptions were decided by a Workers' Compensation Law Judge (WCLJ). Using hearings to resolve these disputes is costly and time consuming.

With the fee schedules, carriers and self-insured employers will enjoy a set price that provides savings that can be passed on to all employers. To ensure the fee schedule is sufficient, the Chair is authorized to make adjustments to it for particular medications if the reimbursement is grossly inadequate to meet the pharmacy's costs. Such adjustment can only occur after a thirty day notice period. Carriers can designate pharmacies to be used by injured workers and that charge below the fee schedule, resulting in greater savings.

Having a set price will reduce the number of disputes regarding the costs of prescriptions, freeing WCLJs to resolve other issues. A reduction in disputes results in savings to carriers and self-insured employers, as they do not incur litigation costs.

The fee schedule will benefit claimants if they have to pay out of pocket. Instead of being charged the higher prices, claimants can only be charged the amount set by the fee schedule.

The rule clarifies how a pharmacy or pharmacy chain may be designated. Specifically, the rule dictates the notice carriers and employers are required to provide to employees to advise that a pharmacy has been designated, and the procedures for filling prescriptions at the designated pharmacy. When a pharmacy is designated, the pharmacy must bill the carrier directly. Direct billing benefits claimants as they are not required to pay out of pocket for prescriptions and then seek reimbursement. As a designated pharmacy, the pharmacy benefits from the elimination of delay and uncertainty of payment. To encourage pharmacies to fill prescriptions without requiring out of pocket payment by the claimant when a claim is controverted, the rule increases the fee schedule by 25 percent and increases the dispensing fee in controverted cases where the carrier or self-insured employer is ultimately found liable to pay for the medication.

4. Costs: There are some additional costs for carriers or self-insured employers, as they must now respond to bills or requests for reimbursement for prescriptions within 45 days. If the carrier or self-insured employer fails to either pay for the prescription or object to the bill within 45 days, it is liable for the cost of the prescription, regardless of whether the medication is for a work-related injury or illness. This new time period is set by statute and cannot be changed by regulation.

There are costs associated with providing the required notices to the claimant. Carriers and self-insured employers must provide notice when pharmacies or pharmacy chains have been designated, which sets forth the procedures to follow in utilizing the designated pharmacy or pharmacy chain (Appendix B). Notice must also be provided when a claim is controverted (Appendix A). A carrier or self-insured employer may provide notice of designated pharmacies or pharmacy chains by identifying a pharmacy benefit manager or other party that can provide employees with

such information, thereby limiting the costs of notice. WCL Section 13-0 requires notice to a claimant about the existence of a pharmacy network before a claimant can be required to utilize a pharmacy that is part of the network. As part of the notice requirements, carriers, self-insured employers and/or pharmacy benefit managers will be required to maintain a toll free telephone number and website with information on designated pharmacies. Employers must also provide injured workers with an identifying document stating the name of the carrier or self-insured employer, and listing telephone and other contact information by which a pharmacy may make inquiries concerning the worker's coverage.

Designated pharmacies should incur minimal cost to provide notice of their designations from carriers or self-insured employers, as such notice is to be posted only where the pharmacy posts lists of the insurance it accepts for any other purpose. The fee schedule will reduce the amount that a pharmacy can charge for a drug, in some cases significantly, but this reduction will be reflected in savings to the workers' compensation system as a whole. Fee schedules already exist for other medical treatment in the workers' compensation system, including radiological tests, physical therapy, chiropractic visits and many others.

The use of a uniform price standard will reduce the number of hearings about the amount of reimbursement to a claimant, thus reducing the costs necessary for legal representation at the hearing. Provision is also included for the Chair to adjust the fee schedule, if he or she deems it appropriate, in instances where the reimbursement amount is grossly inadequate for a pharmacy or durable medical goods provider to meet their costs.

5. Local government mandates: A self-insured municipality or government agency is required to comply with the rules for reimbursement for prescriptions and the rules for notice of a designated pharmacy. Municipalities or governmental agencies have the option to designate a pharmacy, and the fee schedule will still afford substantial savings to a municipality or governmental agency if a pharmacy is not designated. It is expected that the regulation will reduce costs by allowing self-insured local governments to negotiate for lower prescription costs with contracted pharmacies.

6. Paperwork: There are notification requirements that must be met by carriers and employers. Carriers are required by WCL Section 13(i)(5) to provide notice to claimants that a pharmacy has been designated and that claimants are required to use it to fill their prescriptions. The regulations specify the content and method of such notification. Notice must be given to all employees when a carrier or self-insured employer contracts with a pharmacy or pharmacy chain so employees know to use a designated pharmacy when injured. Employers are also required to provide each injured worker with an identifying document containing the insurance carrier contact information and pharmacy benefits information to ensure proper billing and savings.

When contracting with a pharmacy, a carrier or self-insured employer has the option to establish a streamlined method of payment, eliminating the receipt of multiple bills for prescriptions. In addition, carriers are required to respond to a prescription bill within 45 days or they will waive any objection to payment. Carriers are required to provide a listing of all designated pharmacies to the Board and update it monthly with any additions or subtractions or provide the name and contact information for a pharmacy benefit manager. If the pharmacy benefit manager or pharmacy(ies) designated in the original notice to the employee changes, notice must be provided to all employees, which may be sent electronically. Employers are required to post notice in the workplace that identifies the pharmacies or pharmacy chains that have been designated, or a party that can provide such information. The notice must also state the procedures for utilizing designated pharmacies. Employers must also provide injured workers with an identifying document containing carrier contact information.

7. Duplication: There is no duplication.

8. Alternatives: The Chair is required to adopt pharmacy and DME fee schedules by statute. The statute also requires the definition of reasonable distance to be set by regulation. Failure to delineate the responsibilities of all participating parties would lead to confusion on the issue of timely payment, and cause an increase in the number and length of hearings required to resolve this issue.

The Chair considered alternative pharmacy fee schedules. One alternative would be to use AWP or some modification thereof. However, the Chair chose Medicaid after studying California, which adopted that State's Medicaid fee schedule. The experience in California has produced great savings and claimants have been able to obtain prescriptions. In addition, the Medicaid fee schedule is set by the Department of Health for New York, and is widely known. Other proposals would have resulted in far less savings to the workers' compensation system.

Meetings and teleconferences were held with many parties, and comments about the rule were considered. Among others, such meetings, teleconferences, and/or comments involved the New York State Assembly, New York State Senate, Business Council of New York State, New York State American Federation of Labor and Congress of Industrial Organizations, Workers' Compensation Pharmacy Alliance, State Insurance Fund, Property Casualty Insurers Association, and a number of pharmacies.

9. Federal standards: There are no applicable Federal standards.

10. Compliance schedule: The proposed regulation is mandatory. All affected carriers and self-insured employers have used fee schedules set by earlier regulation as of July 11, 2007.

Regulatory Flexibility Analysis

1. Effect of rule:

While many of the pharmacies in New York are outlets for large pharmacy chains, there are still many independent pharmacies that are small businesses. They will be subject to the new fee schedule for prescription medication. If they are included in a carrier's designated pharmacy network, they will also be subject to the provision regarding the posting a listing of which Workers' Compensation carriers networks they participate in. Many stores carrying durable medical goods are also small businesses and will be subject to the new fee schedule for that equipment.

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. As part of the overall rule, these self-insured local governments will be required to file objections to prescription drug bills or durable medical equipment bills if they object to any such bills. This process is required by statute. This rule affects members of self-insured trusts, some of which are small businesses. Typically a self-insured trust utilizes a third party administrator or group administrator to process workers' compensation claims. A third party administrator or group administrator is an entity which must comply with the new rule. These entities will be subject to the new rule in the same manner as any carrier or self-insured employer subject to the rule. Under the rule, objections to a prescription bill must be filed within 45 days of the date of receipt of the bill or the objection is deemed waived and the carrier or self-insured employer is responsible for payment of the bill. Additionally, affected entities must provide notification to the claimant if they choose to designate a pharmacy or pharmacies where injured employees must purchase medication, as well as the procedures necessary to fill prescriptions at the designated pharmacy.

The new rule will provide savings to small business and local government by reducing the cost of prescription drugs by utilization of a pharmacy fee schedule instead of retail pricing. Litigation costs associated with reimbursement rates for prescription drugs will be substantially reduced or eliminated because the rule sets the price for reimbursement. Additional savings will be realized by utilization of designated pharmacies, whose prices may be lower than the schedule.

2. Compliance requirements:

Self-insured employers are required by statute to file objections to prescription drug bills or durable medical equipment bills within a forty-five day time period if they object to all or part of the bill; otherwise they will be liable to pay for the bill if the objection is not timely filed. Notice to the injured worker must be provided outlining that a network pharmacy has been designated and the procedures necessary to fill prescriptions at the network pharmacy.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will impose minimal compliance costs on small business or local governments which will be more than offset by the savings afforded by the fee schedule. There are filing and notification requirements that must be met by small business and local governments, as well as any other entity that utilizes a pharmacy network. Notices are required to be posted in the workplace and provided directly to employees informing workers of designated network pharmacies or pharmacy chains, or of an entity from which employees can obtain such information. Employers are required to provide a document such as a pharmacy benefit card identifying the carrier and providing contact information for the pharmacy either in the claimant information packet if required to be distributed by regulation or immediately after being informed of an accident. Pharmacies and providers of durable medical equipment will receive a lower price due to the fee schedule. Some of this cost will be offset by the dispensing fees that the pharmacies will receive for prescription drugs. The cost to these small

businesses will be further reduced by eliminating the carriers' need to initiate disputes over payments that currently must be decided by a Workers' Compensation Law Judge (WCLJ). Using hearings to resolve these disputes was costly and time consuming. Under the proposed rule, carriers and self-insured employers will pay a set price according to a fee schedule, unless they have entered into agreements with designated pharmacies to pay at rates below that schedule. To ensure the fee schedule is sufficient, the Chair is authorized to make adjustments to it for particular medications if the reimbursement is grossly inadequate to meet the pharmacy's costs. To encourage pharmacies to fill prescriptions without requiring out of pocket payment by the claimant when a claim is controverted, the rule increases the fee schedule by 25 percent and increases the dispensing fee in controverted cases where the carrier or self-insured employer is ultimately found liable to pay for the medication.

5. Economic and technological feasibility:

There are no additional implementation or technology costs to comply with this rule. The New York State Department of Health Medicaid Office has the fee schedule posted on the Medicaid website. Since the Board stores its claim files electronically, it has provided access to case files through its eCase program to parties of interest in workers' compensation claims. Most insurance carriers, self-insured employers and third party administrators have computers and internet access in order to take advantage of the ability to review claim files from their offices. Further, the Board already provides information for the general public on its website. The Board will provide access to the fee schedule through its website or by providing a link to the Department of Health Medicaid Office. No other additional equipment or software is needed for access to the fee schedule other than an existing web browser and a computer with internet access.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts to all insurance carriers, employers, self-insured employers and claimants. The rule provides a process for reimbursement of prescription drugs as mandated by WCL section 13(i). Further, the notice requirements are to ensure a claimant uses a network pharmacy to maximize savings for the employer as any savings for the carrier can be passed on to the employer. The costs for compliance are minimal and are offset by the significant savings by using Medicaid as the index for a pharmacy fee schedule instead of reimbursement at retail prices as currently exists.

The proposed rule is also designed to minimize adverse impacts to pharmacies and providers of durable medical equipment through the use of dispensing fees, eliminating disputes over appropriate charges, allowing for adjustments to the schedule, and providing increased payment from insurers in controverted cases, as mentioned in the Costs section.

7. Small business and local government participation:

The Assembly, Senate, Business Council of New York State, AFL-CIO, insurance carriers, State Insurance Fund, pharmacies and pharmacy benefit managers provided input on the proposed rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all carriers, employers, self-insured employers, third party administrators and pharmacies in rural areas. This includes all municipalities in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file objections to prescription drug bills or durable medical equipment bills within a forty five day time period or will be liable for payment of a bill. This requirement will expedite processing of prescription drug bills or durable medical bills under the existing obligation under Section 13 of the WCL. Carriers and self-insured employers must also provide notice to employees identifying any pharmacies or pharmacy chains the employer or carrier has designated for their use or a pharmacy benefit manager or other party that can provide such information, and the procedures necessary to fill prescriptions at such pharmacies. Carriers and self-insured employers must notify the Board of additions and subtractions from the list of pharmacies in a network on a monthly basis, or designate a pharmacy benefit manager or other party who can provide such information. Employers must also provide injured workers with a benefit card or other identifying document identifying the relevant employer or carrier, and providing contact information.

3. Costs:

This proposal will impose minimal compliance costs on carriers and employers across the State, including rural areas, which will be more than offset by the savings afforded by the fee schedule. There are filing and notification requirements that must be met by all entities subject to this rule. Notices are required to be posted and distributed in the workplace

when an employer has designated any pharmacies or pharmacy chains for use by injured employees, and objections to prescription drug bills must be filed within 45 days or the objection to the bill is deemed waived and must be paid without regard to liability for the bill. The rule provides a reimbursement standard for an existing administrative process.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides a benefit to small businesses and local governments by providing a pricing ceiling and allowing for designation of pharmacies that charge below such ceiling, thereby providing cost savings and reducing disputes involving the proper amount of reimbursement or payment for prescription drugs or durable medical equipment. The rule is also a benefit because it mitigates any adverse impact by using an existing fee schedule (the Medicaid fee schedule) that is familiar to state agencies and insurance carriers that encounter the Medicaid pharmacy fee schedule. It promotes a uniform standard across state agencies utilizing a pharmacy fee schedule and by preventing the need to change multiple systems to administer claims. Notification requirements are minimized by allowing the employer or carrier to identify a third party administrator who can make such information available on employees' requests.

5. Rural area participation:

Comments were received from the Assembly, Senate, Business Council of New York State, AFL-CIO, State Insurance Fund, insurance carriers, pharmacies and pharmacy benefit managers regarding the impact on rural areas.

Job Impact Statement

The proposed amendment will not have an adverse impact on jobs. This amendment is intended to provide a standard for reimbursement of pharmacy and durable medical equipment bills.