

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

NOTICE OF ADOPTION

Credentialing of Counselors and Professionals

I.D. No. ASA-52-07-00010-A

Filing No. 133

Filing date: Feb. 11, 2008

Effective date: Feb. 27, 2008

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

Action taken: Amendment of Parts 853 and 855 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(a), 19.09(b), (d), 19.21(d), 32.01 and 32.07

Subject: Amendment to credentialing of alcoholism and substance abuse counselors and alcohol and substance abuse prevention professionals.

Purpose: To eliminate the oral examination and change the renewal cycle from two years to three years.

Text or summary was published in the notice of proposed rule making, I.D. No. ASA-52-07-00010-P, Issue of December 26, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Patricia Flaherty, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203-3526, (518) 485-2317, e-mail: Patricia.Flaherty@oasas.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standards of Inmate Behavior in all Facilities, Institutional Rules of Conduct and Inmate Correspondence Program

I.D. No. COR-09-08-00002-P

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

Proposed action: This is a consensus rule making to amend sections 270.2(B)(14)(vi) and 720.8(a)(2) of 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 138

Subject: Standards of inmate behavior in all facilities, institutional rules of conduct and Inmate Correspondence Program.

Purpose: To increase the maximum allowable value of postage stamps that an inmate may possess.

Text of proposed rule: Sections 270.2(B)(14)(vi) and 720.8(a)(2) of 7 NYCRR are hereby amended as follows:

(vi) 113.16 An inmate shall not be in possession of stamps in excess of \$22.50[20] in value, money, credit card, credit card numbers, check or unauthorized valuable or property.

§ 720.8 Postage.

(a) Purchase/possession of stamps. (1) Inmates may not receive stamps through the mail or through inmate packages.

(2) The maximum value of stamps in an inmate's personal possession should not exceed \$22.50[20].

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed amendments as they merely increase the maximum value of postage stamps that an inmate may possess. The intent of this proposal is to accommodate the increase by the United States Postal Service in the price of a first class postage stamp to .41 cents. DOCS inmates are allowed to purchase up to 50 domestic first class stamps in accordance with Section 720.8 (a) (5) of 7 NYCRR, therefore it was necessary to increase the maximum value of postage stamps that an inmate may possess accordingly.

Job Impact Statement

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

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standing Committees of the Board of Regents

I.D. No. EDU-09-08-00009-P

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

Proposed action: Amendment of sections 3.2 and 4-1.5 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided)

Subject: Standing committees of the Board of Regents.

Purpose: To conform the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents, which separated the Committee on Higher Education and Professional Practice into the Committee on Higher Education and the Committee on Professional Practice, and which separated the Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities into the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

Text of proposed rule: 1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective June 12, 2008, as follows:

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

- (1) Policy Integration and Innovation.
- (2) Higher Education [and Professional Practice].
- (3) Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities].
- (4) Cultural Education.
- (5) Ethics.
- (6) *Professional Practice.*
- (7) *Vocational and Educational Services for Individuals with Disabilities.*

2. Subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective June 12, 2008, as follows:

(d) The functions of the standing committees shall include:

- (1) . . .
- (2) Committee on Higher Education [and Professional Practice]:
 - (i) develops policy recommendations regarding postsecondary education and retraining programs, [and develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional assistance programs, and the disciplinary process,] and monitors implementation of such functions by the department;
 - (ii) oversees preparation of the statewide plan for the development of postsecondary education and reviews and approves amendments to institutional or sectorial master plans for new programs and facilities [and amendments relating to professional practice and professional conduct];
 - (iii) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to postsecondary education issues, including academic and professional program approval, and student and institutional financial aid[, professional licensure requirements, and the administration of continuing professional competence requirements and amendments relating to professional practice and professional conduct;
 - (iv) oversees administration of continuing competence requirements for professional licensure and registration;
 - (v) develops policy recommendations concerning professional manpower, examination and licensure issues and requirements, including minority access to professional education and licensure;

(vi) reviews and approves appointments to the State boards for regular service (advising on licensure, examinations, practice and discipline) for the professions;

(vii) reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements];

[(viii)] (iv) monitors the financial conditions of the postsecondary institutions;

[(ix)] (v) develops legislative and budgetary proposals for higher and professional education[, professional practice and professional discipline,] and monitors advocacy of such proposals;

[(x)] (vi) recommends appointments to advisory councils and boards; [and]

[(xi)] (vii) seeks input from the public and the field concerning postsecondary education policies and practices; and

[(xii)] (viii) reviews and makes recommendations to the full board on incorporation and chartering of higher education institutions and organizations, professional organizations, and institutions offering professional education programs[;

(xiii) reviews and approves appointments to the State Boards for the Professions for service on licensure/disciplinary panels;

(xiv) reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;

(xv) reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license; and

(xvi) seeks input from the public and the professions concerning professional practice and professional discipline policies and practices].

(3) Committee on Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities]:

(i) develops policy recommendations regarding elementary, middle and secondary education, workforce preparation and continuing education, [vocational rehabilitation and special education, overall coordination of vocational and educational services for individuals with disabilities,] and coordination of interagency agreements and activities;

(ii) . . .

(iii) . . .

(iv) . . .

(v) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to elementary, middle and secondary education and workforce preparation and continuing education[, and amendments relating to vocational rehabilitation, special education and related educational services for individuals with disabilities];

(vi) . . .

(vii) develops legislative and budgetary proposals for elementary, middle and secondary education and workforce preparation and continuing education[, vocational rehabilitation, special education and related educational services for individuals with disabilities,] and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;

(viii) initiates studies and activities leading to the improvement of educational conditions and outcomes for children from birth through high school graduation and adults in workforce preparation and continuing education programs; and

(ix) reviews and makes recommendations to the full board on incorporation and chartering of institutions and organizations proposing to offer prekindergarten, kindergarten, elementary, middle or secondary education programs[.];

[(x)] monitors the implementation of vocational rehabilitation and special education programs and services and of interagency agreements;

(xi) reviews the development and implementation of the Regents Comprehensive Plan for the Office of Vocational and Educational Services for Individuals with Disabilities; and

(xii) seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.]

(4) . . .

(5) . . .

(6) *Committee on Professional Practice:*

(i) develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional manpower issues, professional licensure requirements including licensing examination requirements, which shall include issues

concerning minority access to professional education, licensing examinations and licensure, professional assistance programs, and the professional disciplinary process, and monitors implementation of such functions by the department;

(ii) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to professional licensure requirements, continuing professional competence requirements, professional practice, and professional conduct;

(iii) develops legislative and budgetary proposals relating to professional practice and professional discipline policies and practices, and monitors the advocacy of such proposals;

(iv) oversees administration of continuing competence requirements for professional licensure and registration;

(v) reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;

(vi) reviews Regents Review Committee recommendations in proceedings relating to the unauthorized practice of the professions or the unauthorized use of a professional title;

(vii) reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license;

(viii) reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements;

(ix) seeks input from the public and professions concerning professional practice and professional discipline policies and practices; and

(x) reviews and approves appointments to the State board for the professions.

(7) Committee on Vocational and Educational Services for Individuals with Disabilities:

(i) develops policy recommendations regarding vocational rehabilitation and special education, overall coordination of vocational and educational services to individuals with disabilities, and coordination of interagency agreements and activities;

(ii) monitors the implementation of vocational rehabilitation and special education programs and services and interagency agreements;

(iii) develops legislative and budgetary proposals for vocational rehabilitation, special education and related educational services for individuals with disabilities, and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;

(iv) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to vocational rehabilitation, special education and related educational services for individuals with disabilities; and

(v) seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.

3. Subparagraph (iv) of paragraph (11) of subdivision (a) of section 4-1.5 of the Rules of the Board of Regents is amended, effective June 12, 2008, as follows:

(iv) The commissioner shall transmit the appeal papers to a standing subcommittee on accreditation appeals of the committee on higher education [and professional practice] of the Board of Regents.

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: Kathy A. Ahearn, Counsel and Deputy Commissioner for Legal Affairs, Office of Counsel, State Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 474-6400

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:

Education Law section 207 gives the Board of Regents broad authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment reorganizes the committee structure of the Board of Regents to assist the Board in meeting its statutory responsibility to determine the educational policies of the State and to carry out the laws and policies of the State relating to education.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The Committee on Higher Education and Professional Practice has been separated into the Committee on Higher Education and the Committee on Professional Practice. The Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities has been separated into the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

The Board of Regents has determined that the reorganization of the committee structure of the Board of Regents is necessary to assist the Board of Regents to effectively meet its statutory responsibility to determine the educational policies of the State and carry out the laws and policies of the State relating to education. In accordance with the recent changes made to the committee structure of the Board, the proposed amendment will establish the specific functions of each newly formed committee so that each committee may efficiently and effectively review items and priority issues, which will, in turn, assist the Board of Regents to efficiently carry out its statutory responsibilities.

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment relates to the internal organization of the Board of Regents and merely reorganizes the committee structure of the Board of Regents, and will not impose any costs on State and local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment does not impose any reporting, record keeping or other paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of New York State and there are no federal standards governing such.

10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

Regulatory Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates to the internal organization of the Board of Regents and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Education of Homeless Children and Youth

I.D. No. EDU-09-08-00010-P

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

Proposed action: Amendment of section 100.2(x)(1)(vi) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 3202(1) and (8), 3209(1)(a) and (7) and 3713(1) and (2)

Subject: Education of homeless children and youth.

Purpose: To clarify the definition of “unaccompanied youth” in the commissioner’s regulations and subtitle B of title VII of the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended; and clarify disputes regarding transportation or a child’s status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

Text of proposed rule: 1. Subparagraph (vi) of paragraph (1) of subdivision (x) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective June 12, 2008, as follows:

(vi) unaccompanied youth means a homeless child [for whom no parent or person in parental relation is available] or youth not in the physical custody of a parent or legal guardian. The term unaccompanied youth shall not include a child or youth who is residing with someone other than a parent or legal guardian for the sole reason of taking advantage of the schools of the district.

2. Subparagraph (ii) of paragraph (7) of subdivision (x) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective June 12, 2008, as follows:

(ii) Dispute resolution. Each school district shall:

(a) establish procedures, in accordance with 42 U.S.C. section 11432(g)(3)(E), for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or youth (Public Law 107-110, title X, section 1032, 115 STAT. 1998; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234, including, but not limited to, disputes regarding transportation and/or a child’s or youth’s status as a homeless child or unaccompanied youth;

(b) . . .

(c) . . .

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

Education law section 3202(8) provides that a homeless child, as defined in Education Law section 3209(1), over the age of five and under twenty-one years of age, who has not received a high school diploma, shall be entitled to attend a public school without the payment of tuition, in accordance with the provisions of Education Law section 3209.

Education Law section 3209 sets forth requirements for the education of homeless children. Subdivision (7) of section 3209 authorizes the Commissioner to promulgate regulations to carry out the provisions of the statute.

Education Law section 3713(1) and (2) authorizes the State and school districts to accept federal law making appropriations for educational purposes and authorizes the Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes, and is necessary to clarify the definition of an unaccompanied youth in the Commissioner’s Regulations and the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended. The proposed amendment also clarifies that disputes regarding transportation or a child’s status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to clarify the definition of “unaccompanied youth” in the Commissioner’s Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended, in order to resolve concerns among school districts as to when a student should be considered a homeless unaccompanied youth under State and federal law. The proposed amendment also clarifies that disputes regarding transportation or a child’s status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The State and school districts are required to comply with the requirements of the McKinney-Vento Act as a condition to their receipt of federal funds.

4. COSTS:

Cost to the State: None. The proposed amendment is necessary to clarify the definition of “unaccompanied youth” in the Commissioner’s Regulations and the federal McKinney-Vento Act, as amended. The proposed amendment also clarifies that disputes regarding transportation or a child’s status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

The State is required to comply with federal statutes as a condition to its receipt of federal funding. The proposed amendment will not impose any costs on the State beyond those imposed by State and federal statutes.

Costs to local government: None. The proposed amendment is necessary to clarify the definition of “unaccompanied youth” in the Commissioner’s Regulations and the federal McKinney-Vento Act, as amended. The proposed amendment also clarifies that disputes regarding transportation or a child’s status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). School districts and other local educational agencies are required to comply with federal statutes as a condition to their receipt of federal funding. The proposed

amendment will not impose any costs on school districts beyond those imposed by State and federal statutes.

Cost to private regulated parties: None. The proposed amendment applies to school districts and does not impose any costs or compliance requirements on private parties.

Cost to regulating agency for implementation and continued administration of this rule: None. The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and the federal McKinney-Vento Act, as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The State is required to comply with these federal statutes as a condition to its receipt of federal funding. The proposed amendment will not impose any additional costs on the Department beyond those imposed by State and federal statutes.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and the federal McKinney-Vento Act, as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and federal statutes.

6. PAPERWORK:

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and the federal McKinney-Vento Act, as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The proposed amendment will not impose any additional recordkeeping or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and federal rules or requirements, and is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and the federal McKinney-Vento Act. (42 U.S.C. sections 11431 *et seq.*), as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and the federal McKinney-Vento Act. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and the federal McKinney-Vento Act. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date. The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and the federal McKinney-Vento Act. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The proposed amendment does not impose any compliance requirements beyond those required by State and federal statutes.

Regulatory Flexibility Analysis

Small businesses:

The proposed rule applies to school districts and relates to the education of homeless children and youth. The proposed rule does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local government:

EFFECT OF RULE:

The proposed amendment is applicable to all public school districts in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended, in order to resolve concerns among school districts as to when a student should be considered a homeless unaccompanied youth under State and federal law. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The proposed amendment will not impose any additional reporting, recordkeeping or other compliance requirements on school districts beyond those imposed by State and federal statutes.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The proposed amendment will not impose any costs on school districts beyond those imposed by State and federal statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on school districts.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). School districts are required to comply with the requirements of the McKinney-Vento Act as a condition to their receipt of federal funding. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or costs, on school districts beyond those imposed by Federal and State statutes.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Copies of the proposed rule were also provided to the State Committee of Practitioners (COP), which consists of teachers, parents, district and building-level administrators, members of local school boards, and pupil personnel services staff, who are representative of all constituencies from various geographical locations across the State. The COP includes teachers and paraprofessionals from around the State representing a variety of grade levels and subject areas, directors of teacher-preparation institutions, officials and educators representing the New York City Board of Education, several other urban and rural school systems, nonpublic schools, parent advocacy groups, teacher union representatives and community-based organizations.

Copies of the proposed rule were also provided to the Homeless Advisory Committee (HAC) which consists of liaisons for homeless students from BOCES and school districts from various geographical locations; staff from the NYS-TEACHS (technical assistance center for homeless students); representatives from NYCDOE that oversee the homeless education program; representatives from Head Start, VESID, Office of Children and Family Services (OCFS); Department of Social Services (DSS); NYC Domestic Violence & Emergency Intervention Services; NYC Early Intervention Program; NYC Dept. of Homeless Services; NYC Dept. of Youth and Community Development; The Partnership for the Homeless; NYC Administration for Children's Services; HRA – Dept. of Social Services; and NYS PTA. The HAC includes professionals from around the State representing a variety of school district liaisons for homeless students, officials and educators representing the New York City Board of Education, parent advocacy groups, agencies and community-based organizations that represent homeless students and/or their families.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended, in order to resolve concerns among school districts as to when a student should be considered a homeless unaccompanied youth under State and federal law. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). The proposed amendment will not impose any additional reporting, recordkeeping or other compliance requirements on school districts in rural areas beyond those imposed by State and federal statutes.

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

COSTS:

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). School districts are required to comply with the requirements of the McKinney-Vento Act as a condition to their receipt of federal funding. The proposed amendment will not impose any costs school districts in rural areas beyond those imposed by State and federal statutes.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended. The proposed amendment also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E). School districts are required to comply with the requirements of the McKinney-Vento Act as a condition to their receipt of federal funding. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or costs, on school districts beyond those imposed by Federal and State statutes. Since these requirements apply to school districts across the State, it was not possible to exempt, or provide a lesser standard for, school districts in rural areas. The proposed amendment will not impose any additional compliance requirements or costs beyond those imposed by State and federal statutes.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas, and from school districts through the

offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Copies of the proposed rule were also provided to the State Committee of Practitioners (COP), which consists of teachers, parents, district and building-level administrators, members of local school boards, and pupil personnel services staff, who are representative of all constituencies from various geographical locations across the State. The COP includes teachers and paraprofessionals from around the State representing a variety of grade levels and subject areas, directors of teacher-preparation institutions, officials and educators representing the New York City Board of Education, several other urban and rural school systems, nonpublic schools, parent advocacy groups, teacher union representatives and community-based organizations.

Copies of the proposed rule were also provided to the Homeless Advisory Committee (HAC) which consists of liaisons for homeless students from BOCES and school districts from various geographical locations; staff from the NYS-TEACHS (technical assistance center for homeless students); representatives from NYCDOE that oversee the homeless education program; representatives from Head Start, VESID, Office of Children and Family Services (OCFS); Department of Social Services (DSS); NYC Domestic Violence & Emergency Intervention Services; NYC Early Intervention Program; NYC Dept. of Homeless Services; NYC Dept. of Youth and Community Development; The Partnership for the Homeless; NYC Administration for Children's Services; HRA – Dept. of Social Services; NYS PTA. The HAC includes professionals from around the State representing a variety of school district liaisons for homeless students, officials and educators representing the New York City Board of Education, parent advocacy groups, agencies and community-based organizations that represent homeless students and/or their families.

Job Impact Statement

The proposed amendment applies to school districts and relates to the education of homeless children and youths. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Educational Requirements Relating to Tuition Assistance Program (TAP) Awards

I.D. No. EDU-09-08-00011-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 145-2.2 and 145-2.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 602(1) and (2), 661(2) and 665(2) and (6)

Subject: Educational requirements relating to Tuition Assistance Program (TAP) awards including those awards for accelerated study.

Purpose: To conform the commissioner's regulations to changes made to subdivisions 2 and 6 of section 665 of the Education Law by Parts E-1 and E-2 of section 1 of chapter 57 of the Laws of 2007 by updating the academic achievement requirements (minimum credits and minimum cumulative grade point average) a student must meet before being certified for a payment on his/her Tuition Assistance Program (TAP) award including such an award for accelerated study.

Text of proposed rule: 1. Section 145-2.2 of the Regulations of the Commissioner of Education is amended, effective June 12, 2008, as follows:

§ 145-2.2 Academic requirements; program pursuit and academic progress.

(a) *State awards first received prior to September 1, 1981.* For the purposes of articles 13 and 14 of the Education Law, students who have received a State award prior to September 1, 1981 shall meet the following academic requirements:

(1) Attendance. Failure of the student to pursue the program of study will result in the loss of eligibility to receive an award. The institution, in recording and reporting student academic progress, shall take cognizance of attendance as it relates to progress.

(2) Good academic standing. Good academic standing, where required by law, means that: (i) the institution maintains a formal, published statement of its requirements for the maintenance of good academic standing; (ii) the student is matriculated at the institution; and (iii) the institution has determined that the student meets its standard for good academic standing.

(b) *State awards first received during academic year 1981-1982, and thereafter.*

(1) *Part-time study, academic requirements.* For the purposes of articles 13 and 14 of the Education Law, *part-time* students who receive their first State award during the [1981-82 school] 1981-1982 academic year and thereafter shall maintain good academic standing by complying with the requirements prescribed in subparagraph (i) of this paragraph.

[(1)] (i) Loss of good academic standing for [full-time study or] part-time study [, whichever is applicable,] shall be determined at the end of each term of the academic year, and shall mean that a student has either:

[(i)] (a) failed to pursue the program of study in which he or she is enrolled, as determined pursuant to [paragraph (3)] subparagraph (iii) of this [subdivision] paragraph; or

[(ii)] (b) failed to make satisfactory progress toward the completion of his or her program's academic requirements, as determined by [paragraph (4)] subparagraph (iv) of this [subdivision] paragraph.

[(2)] (ii) Following a determination that the recipient of an award has lost good academic standing, further payments of any award under article 13 or 14 of the Education Law shall be suspended until the student is restored to good academic standing by either:

[(i)] (a) pursuing the program of study in which he or she is enrolled and making satisfactory progress toward the completion of his or her program's academic requirements; or

[(ii)] (b) establishing in some other way, to the satisfaction of the commissioner, evidence of his or her ability to successfully complete an approved program.

[(3)] (iii) Except as provided for in [paragraph (5)] subparagraph (v) of this [subdivision] paragraph, a student shall be deemed to be pursuing the approved program of study in which [he] the student is enrolled if:

[(i)] (a) during each term of study in the first year for which an award is being received, [he] the student receives a passing or failing grade in at least one half of the minimum amount of study required to constitute [full-time study or] part-time study, [whichever is applicable,] pursuant to section 145-2.1 of this Subpart; or

[(ii)] (b) during each term of study in the second year for which an award is being received, [he] the student receives a passing or failing grade in at least three fourths of the minimum amount of study required to constitute [full-time study or] part-time study, [whichever is applicable,] pursuant to section 145-2.1 of this Subpart; or

[(iii)] (c) during each subsequent term of study for which an award is being received, [he] the student receives a passing or failing grade in no less than the minimum amount of study required to constitute [full-time study or] part-time study, [whichever is applicable,] pursuant to section 145-2.1 of this Subpart.

[(4)] (iv) Except as provided for in [paragraph (5)] subparagraph (v) of this [subdivision] paragraph, to determine whether a student receiving an award is making satisfactory progress toward the successful completion of his or her program's academic requirements, each institution shall establish and apply a standard of satisfactory academic progress which includes required levels of achievement to be measured at stated intervals. Criteria for achievement shall include, but need not be limited to:

[(i)] (a) the minimum number of credits earned, or courses successfully completed, at each interval; and

[(ii)] (b) the minimum cumulative grade point average or similar measure at each interval.

Each institution shall obtain the approval of the commissioner prior to the implementation of its standard of satisfactory academic progress and prior to any changes in such standard.

[(5)] (v) The provisions of [paragraphs (3)] subparagraphs (iii) and [(4)] (iv) of this [subdivision] paragraph may be waived once for an undergraduate student and once for a graduate student if an institution certifies, and maintains documentation, that such waiver is in the best interests of the student. Prior approval by the commissioner of the criteria and procedures used by an institution to consider and grant waivers shall not be required. The commissioner may review such criteria and procedures in use, and require an institution to revise those found to be not acceptable.

(2) *Full-time study, academic requirements.* For the purposes of articles 13 and 14 of the Education Law, *full-time* students who receive their first State award during the 1981-1982 academic year and thereafter shall maintain good academic standing by complying with the requirements prescribed in subparagraph (i) of this paragraph.

(i) Loss of good academic standing shall be determined at the end of each term of the academic year, and shall mean that a student has:

(a) failed to pursue the program of study in which he or she is enrolled, as determined pursuant to subparagraph (iii) of this paragraph; and/or

(b) failed to make satisfactory progress toward the completion of his or her program's academic requirements, as determined by subparagraph (iv) of this paragraph.

(ii) If a student is determined to have lost good academic standing by failing to meet the conditions established in clauses (a) and (b) of subparagraph (i) of this paragraph, further payments of any award under article 13 or 14 of the Education Law shall be suspended until the student is restored to good academic standing by either:

(a) pursuing the program of study in which he or she is enrolled and making satisfactory progress toward the completion of his or her program's academic requirements; or

(b) establishing in some other way, to the satisfaction of the commissioner, evidence of his or her ability to successfully complete an approved program.

(iii) Except as provided for in subparagraph (v) of this paragraph, a student shall be deemed to be pursuing the approved program of study in which the student is enrolled if:

(a) during each term of study in the first year for which an award is being received, the student receives a passing or failing grade in at least one half of the minimum amount of study required to constitute full-time study pursuant to section 145-2.1 of this Subpart; or

(b) during each term of study in the second year for which an award is being received, the student receives a passing or failing grade in at least three fourths of the minimum amount of study required to constitute full-time study pursuant to section 145-2.1 of this Subpart; or

(c) during each subsequent term of study for which an award is being received, the student receives a passing or failing grade in no less than the minimum amount of study required to constitute full-time study pursuant to section 145-2.1 of this Subpart.

(iv) Except as provided for in subparagraph (v) of this paragraph, to determine whether a student receiving an award is making satisfactory progress toward the successful completion of his or her program's academic requirements, each institution shall establish and apply a standard of satisfactory academic progress which includes required levels of achievement to be measured at stated intervals. Each institution shall obtain the approval of the commissioner prior to the implementation of its standard of satisfactory academic progress and prior to any changes in such standard. Such standard or revised standard shall include the criteria for achievement established by the institution pursuant to the provisions in this subparagraph and shall be submitted in a format prescribed by the commissioner. Criteria for achievement shall include, but need not be limited to:

(a) for students who receive their first State award during the 1981-1982 academic year through and including the 2005-2006 academic year, the minimum number of credits earned, or courses successfully completed, at each interval and the minimum cumulative grade point average or similar measure at each interval; or

(b) for students who receive their first State award during the 2006-2007 academic year and thereafter, and who are enrolled full-time in a two-year, four-year, or five-year undergraduate program on a semester or trimester basis, or their equivalent, the applicable required minimum number of credits accrued and minimum grade point average earned at the time of the institution's certification for each payment made on the student's award, as specified in subparagraphs (i), (ii), (iii) or (iv) of paragraph (c) of subdivision (6) of section 665 of the Education Law; provided that institutions operating on a trimester basis during the 2006-2007 academic year shall apply the satisfactory academic progress standard pursuant to the provisions in section 665 of the Education Law, and shall apply the particular requirements prescribed in the satisfactory academic progress charts in such section of law for the 2007-2008 academic year and thereafter.

(v) The provisions of subparagraphs (iii) and (iv) of this paragraph may be waived once for an undergraduate student and once for a graduate student if an institution certifies, and maintains documentation, that such waiver is in the best interests of the student. Prior approval by

the commissioner of the criteria and procedures used by an institution to consider and grant waivers shall not be required. The commissioner may review such criteria and procedures in use, and require an institution to revise those found to be not acceptable.

2. Section 145-2.9 of the Regulations of the Commissioner of Education is amended, effective June 12, 2008, as follows:

§ 145-2.9 Accelerated study.

(a) To be eligible to receive payment for accelerated study beyond the regular program of study for the academic year, except for part-time awards pursuant to Education Law, section 666, or for Vietnam veterans tuition awards pursuant to Education Law, section 669-a, a student shall [.]:

(1) during the regular academic year, be a full-time student matriculated in an approved program in a [school] *degree-granting institution* in this State, unless out-of-state study is approved during the regular academic year; and

(2) prior to the term of the application, have earned twenty-four semester hours, or its equivalent, from such institution in the two immediately preceding, consecutive semesters, or their equivalent, provided that the twenty-four semester hours may include the equivalent of three semester hours of remedial course work per semester.

(b) For the purposes of this section, all attendance during a single summer period [, including intersessions,] shall be considered to constitute a single term of attendance. To be eligible for an award for half-time accelerated study, a student shall be a full-time student during the preceding [or succeeding] term and shall have earned twenty-four semester hours, or its equivalent, from such institution in the two immediately preceding consecutive semesters, or their equivalent, provided that the twenty-four semester hours may include the equivalent of three semester hours of remedial course work per semester.

[(b)] (c) Accelerated study shall denote study which meets the following criteria:

(1) The term of study shall be a separately organized term in addition to the regular [school] *academic* year, with separate registration and separate charge for tuition and fees.

(2) Accelerated study shall be accompanied by accelerated tuition charges, so that the total tuition charge upon completion of the accelerated program is comparable to the total tuition charge for the [nonaccelerated] *non-accelerated* program.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (2) of section 602 of the Education Law empowers the Commissioner of Education to promulgate regulations establishing requirements for the president to follow in determining student eligibility for State student aid relating to full-time study, part-time study, accelerated study, matriculation, loss of good academic standing, and permissible use of general and academic performance awards and loans. Subdivision (1) of section 602 of the Education Law empowers the Commissioner of Education to select qualified recipients of academic performance awards.

Subdivision (2) of section 661 of the Education Law grants the Board of Regents the power to establish times for which a student must provide certain information, as required by the Board of Regents, to his or her institution through the submission of a form provided by the Board of Regents.

Subdivision (6) of section 665 empowers the Commissioner of Education to establish standards for a student's good academic standing and loss thereof. Section 665 further empowers the Commissioner of Education to approve an institution's standard of assessing a student's satisfactory academic progress in accordance with the requirements set forth such section of law.

Subdivision 6 of section 665 of the Education Law, as amended by section 3 of Part E-1 of section 1 of Chapter 57 of the Laws of 2007,

requires students who first receive State student aid for the 2006-07 academic school year to have earned a minimum number of credits and a minimum cumulative grade point average at the time of the school's certification for a payment made on the student's award. Subdivision 2 of section 665 of the Education Law, as amended by section 1 of Part E-2 of section 1 of Chapter 57 of the Laws of 2007, provides that students shall qualify for accelerated study if they have completed twenty-four credit hours in the immediately preceding two semesters, which includes three allowable credits per semester of remedial courses.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment conforms the Commissioner's Regulations to specific eligibility requirements for student's first receiving TAP awards, as established in subdivision 6 of section 665 of the Education Law, as amended by Part E-1 of section 1 of Chapter 57 of the Laws of 2007, which include the minimum number of credits completed and minimum cumulative grade point average earned by the student at the time of the institution's certification of the next payment on the student's TAP award.

The proposed amendment further conforms the Commissioner's Regulations to changes made to subdivision 2 of section 665 of the Education Law by section 1 of Part E-2 of section 1 of Chapter 57 of the Laws of 2007 so that students may qualify for State student aid for accelerated study if they have completed twenty-four credits hours in the preceding two consecutive semesters, which may include three credits of remedial courses per such semester.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Commissioner's Regulations to changes made to subdivisions 2 and 6 of section 665 of the Education Law by Parts E-1 and E-2 of section 1 of Chapter 57 of the Laws of 2007, and to update the criteria for achievement a student must complete in order to receive payments on the student's tuition assistance program (TAP) award, and further, to receive payment on an award for accelerated study.

4. COSTS:

a. Costs to the State government. The proposed amendment will not impose any additional costs upon State government, including the State Education Department. The amendment simply conforms the Commissioner's Regulations to subdivisions 2 and 6 of section 665 of the Education Law, as amended by Parts E-1 and E-2 of section 1 of Chapter 57 of the Laws of 2007.

b. Costs to local government. None.

c. Costs to private regulated parties. The proposed amendment will not impose any additional costs upon public or nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions beyond the minimal costs to such institutions to update information materials concerning the number of credits and minimum grade point average a student must have completed before the school's certification for payment on the student's award, and to update information materials concerning the number of credits a student must have completed to qualify for payment on an award for accelerated study.

d. Costs to the regulatory agency for implementation and continued administration of this amendment. None. The proposed amendment simply conforms the Commissioner's Regulations to subdivisions 2 and 6 of section 665 of the Education Law, as amended by Parts E-1 and E-2 of section 1 of Chapter 57 of the Laws of 2007, and will not impose any new duties or responsibilities upon the State Education Department. The Commissioner of Education is already required to approve each institutions standard of satisfactory academic progress prior to the institution's implementation of such standard.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any new mandates, and accordingly, will not impose any additional duties or responsibilities on local governments.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting requirements on any regulated party. The paperwork requirements for public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions will be minimal. In addition, the amendment will not increase the paperwork requirements for students.

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

The proposed amendment concerns eligibility requirements for students receiving State student aid through the tuition assistance program (TAP), and therefore, there are no applicable federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment conforms the Commissioner's Regulations to changes made to newly amended section 665 of the Education Law, which have taken effect.

For students first receiving aid in the 2007-08 school year and thereafter who are enrolled in a two-year, four-year, or five-year undergraduate program whose terms are organized in semesters or trimesters, or the equivalent, shall be immediately subject to the amended criteria for achievement for eligibility for TAP awards. Public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions shall immediately comply with these requirements for student eligibility for TAP awards.

For students first receiving aid in the 2006-07 school year and enrolled in a two-year, four-year, or five-year undergraduate program on a semester basis, or the equivalent, shall be subject to these requirements retroactive to the 2006-07 school year and, as stated above, thereafter. Accordingly, public and nonpublic colleges and universities, education opportunity centers, and postsecondary institutions shall retroactively apply these requirements.

However, for students first receiving aid in the 2006-07 school year and enrolled in a two-year, four-year, or five-year undergraduate program on a trimester basis, or the equivalent, shall be subject to the satisfactory academic progress standard in conformity with the provisions of newly amended section 665 of the Education Law, but shall not be subject to the particular requirements, the academic progress charts, set forth in subdivision 6 of such section of law.

Public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions must immediately comply with these requirements. No additional period of time is necessary to permit regulated parties to meet the requirements of the proposed amendment.

Regulatory Flexibility Analysis

The proposed amendment conforms the Regulations of the Commissioner of Education to section 665 of the Education Law, as amended by Parts E-1 and E-2 of Chapter 57 of the Laws of 2007, by providing the academic progress standards a student must meet before being certified for a payment on his or her tuition assistance program (TAP) award, and more specifically, provides the required minimum number of credits completed and minimum cumulative grade point earned before being certified for such a payment.

The proposed amendment will affect students first receiving TAP awards in the 2006-2007 academic year and thereafter, who are enrolled full-time in a two-year, four-year, or five-year undergraduate program whose terms are organized in semesters or trimesters, or the equivalent. Such students shall be held to the satisfactory academic progress standards set forth in subdivision 6 of section 665 of the Education Law, as amended by Part E-1 of Chapter 57 of the Laws of 2007, which prescribe the number of credits completed and cumulative grade point average earned that the students must earn for certification of a payment on that students' TAP award, provided that students who attended institutions operating on a trimester basis during the 2006-2007 academic year shall be held to the satisfactory academic progress standard, but shall not be held to the particular requirements prescribed in the satisfactory academic progress charts in newly amended section 665 of the Education Law.

Additionally, the proposed amendment conforms the Commissioner's Regulations to newly amended section 665 of the Education Law by establishing the minimum number of credits, including remedial-course credits, a student must complete to qualify for a TAP award for accelerated study.

It is evident from the subject matter of the proposed amendment that it will have no effect on local governments. The amendment will also have no effect on small businesses. The amendment will not impose any adverse economic impact or any additional recordkeeping, reporting, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment applies to all public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions that are eligible, where applicable, to participate in the tuition assistance program (TAP) in New York State, including those located in the 44 rural counties having less than 200,000 inhabitants and the 71 towns in urban counties having a population density of 150 per square mile or less.

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

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to subdivisions 2 and 6 of section 665 of the Education Law, as amended by Parts E-1 and E-2 of section 1 of Chapter 57 of the Laws of 2007. The amendment establishes the minimum number of credits earned and the minimum grade point average accumulated a student must have complete before being certified for the next payment on his or her TAP award. It also establishes the number of credits, including remedial-course credits, a student must complete to qualify for an accelerated study award.

The amendment does not add or alter reporting or recordkeeping requirements for public and nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions, including those located in rural areas, or impose reporting or recordkeeping requirements for students that participate in such programs. In addition, the amendment will not require regulated parties to acquire professional services.

3. COSTS:

The proposed amendment conforms the Commissioner's Regulations to newly amended section 665 of the Education Law. The amendment will not impose any additional costs on public and nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions located in rural areas beyond minimal costs on them to update information materials concerning the number of credits and the grade point average a student must complete before being certified for the next payment on his or her award and number of credits a student needs to qualify for accelerated study and thereby being eligible for an accelerated award.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes the minimum number of credits earned and minimum grade point average accumulated a student must complete before being certified for the next payment on his or her TAP award. It also establishes the number of credits, including allowable remedial-course credits, a student must complete to qualify for an accelerated study award. The amendment does not make any differentiation in eligibility based upon the geographic location of the student. In the interests of equity, uniform criteria are established for all students across the State.

5. RURAL AREA PARTICIPATION:

A copy of the proposed amendment was shared with each of the public and nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions that are eligible to participate in the tuition assistance program (TAP) in New York State. These institutions were asked to comment on the amendment.

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

Job Impact Statement

The proposed amendment conforms the Regulations of the Commissioner of Education to section 665 of the Education Law, as amended by sections E-1 and E-2 of Chapter 57 of the Laws of 2007, which establishes the minimum number of credits earned and minimum grade point average accumulated a student must complete before being certified for the next payment on his or her tuition assistance program (TAP) award. Additionally, the proposed amendment establishes the minimum number of credits, including remedial-course credits, a student must complete to qualify for a TAP award for accelerated study.

The amendment will not affect jobs or employment opportunities in New York State. Because it is evident from the nature of this amendment 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 had not been prepared.

Department of Law

NOTICE OF ADOPTION

Investigations, Civil Enforcement Actions, and Qui Tam Actions Related to Fraud Perpetrated Against the State and Local Governments

I.D. No. LAW-39-07-00008-A

Filing No. 131

Filing date: Feb. 7, 2008

Effective date: Feb. 27, 2008

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

Action taken: Addition of Part 400 to Title 13 NYCRR.

Statutory authority: State Finance Law, section 194

Subject: Investigations, civil enforcement actions, and qui tam actions related to fraud perpetrated against the State and local governments.

Purpose: To establish procedures for (1) investigating persons who defrauded the State or a local government; and (2) the handling and processing of civil enforcement actions and qui tam actions under art. XIII of State Finance Law.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. LAW-39-07-00008-EP, Issue of September 26, 2007.

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

Revised rule making(s) were previously published in the State Register on December 26, 2007, I.D. No. LAW-39-07-00008-ERP.

Text of rule and any required statements and analyses may be obtained from: Gregory M. Krakower, Department of Law, 120 Broadway, New York, NY 10271, (212) 417-5256, e-mail: gregory.krakower@oag.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

NOTICE OF ADOPTION

Communication and Patient Visiting Rights

I.D. No. OMH-51-07-00004-A

Filing No. 136

Filing date: Feb. 12, 2008

Effective date: Feb. 27, 2008

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

Action taken: Repeal of Part 21 and amendment of Part 527 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, art. 7; Mental Hygiene Law, section 33.05

Subject: Communication and patient visiting rights.

Purpose: To amend regulations governing patients' rights to communication and visitation.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-51-07-00004-P, Issue of December 19, 2007.

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

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

Assessment of Public Comment

1. Issue:

The proposed regulation permits individual facilities to institute policies governing possession of contraband. This appears to be an inappropri-

ate delegation of the the duty to promulgate regulations with respect to the right to communicate freely and privately, as set forth in Mental Hygiene Law Section 33.05.

Response:

This comment represents a misreading the proposed regulation. Section 33.05 of the Mental Hygiene Law charges the Commissioner with the responsibility of promulgating regulations which "establish guidelines to insure that patients at facilities have full opportunity for conducting correspondence, have reasonable access to telephones, and have frequent and convenient opportunities to meet with visitors." The regulations set forth in this Part are intended to fulfill this responsibility. The provision at issue does not represent a delegation of the authority to promulgate regulations governing communication or visitation with persons outside the facility. Instead, it maintains the current ability of facilities to properly exercise their administrative authority to preserve a safe and therapeutic environment for their patients, staff, and visitors, through the development of contraband policies intended to prevent the introduction of dangerous items within a facility.

2. Issue:

Proposed 14 NYCRR '527.10(b)(1)(vi), which permits facilities to give persons with legal authority to consent to treatment for minors, to give prior authorization of visitors, serves as an additional consent which further erodes the rights of minors admitted to facilities.

Response: OMH recognizes the critical role of involved parents and guardians in the

treatment process, and remains committed to keeping involved parents and guardians notified and informed of matters involving their child's care and treatment. This provision permits, but does not require, parents or guardians to authorize certain visitors, if in the best clinical interests of the child. For example, a parent could request that visits not be permitted with a person who is known to have sold illegal drugs to his/her child, or who has abused his/her child. OMH believes this provision strikes the proper balance between enabling a child to exercise his/her visitation rights, but with appropriate parental involvement.

3. Issue:

With respect to communication methods, some individuals may be able to communicate via the computer and email and this form of communication should be considered in addition to the communication methods of communication such as writing letters.

Response:

This comment appears to go beyond the scope of the proposed regulations, which neither encourage nor discourage a particular method of communication. OMH agrees that as technology advances, references to paper correspondence are becoming dated; however such references must be maintained as a minimum standard. To the extent facilities have available resources and appropriate, HIPAA compliant security technology (where applicable) to facilitate electronic communication, they are not prevented by these regulations from proceeding in that direction.

4. Issue:

Proposed 14 NYCRR § 527.10(b)(1)(v), which requires State operated facilities to establish regular visiting hours based on the facility's security needs and the needs of the specific population served, implies that liberal visitation varies in importance depending on types of populations served.

Response:

The proposed regulations make it clear that having visitors and visiting outside of the facility is part of the recovery process which maintains ties with family and the rest of the community. As such, the regulations require all facilities to establish visiting hours and policies which are designed to facilitate the exercise of the right to receive visitors. The intent of the provision at issue is to maximize the ability of facilities to establish visiting hours that comport with the needs of the population served, e.g., children's facilities may need to establish visiting hours that take into consideration times when children are scheduled to be in school; visitation schedules at secure forensic facilities may need to be concentrated around times when sufficient staff are available to provide additional security, etc.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prior Approval Review for Quality and Appropriateness

I.D. No. OMH-09-08-00001-P

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

Proposed action: This is a consensus rule making to amend Part 551 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.02(a), 31.04(a) and 31.05(a)

Subject: Prior approval review for quality and appropriateness.

Purpose: To eliminate the Medicaid cap to facilitate growth of new or expanded outpatient programs.

Text of proposed rule: Subdivision (b) of Section 551.13 of Part 551 of Title 14 NYCRR is amended by deleting paragraph (3) to read as follows:

(a) In addition to the criteria of sections 551.7 and 551.10 of this Part, applications for outpatient projects shall be reviewed against the criteria of this section.

(b) In reviewing outpatient projects, the Office of Mental Health shall consider:

(1) the advice and recommendations of the local governmental unit; and

(2) whether the project serves special populations[; and

(3) for projects in which the proposed operating budget includes reimbursement from Medicaid or local assistance, the impact, source, and availability of the State share from such funds:

(i) a currently licensed outpatient program submitting an application to change program category, or submitting an application for a significant expansion shall be considered as impacting the State share of local assistance and/or Medicaid only if current and proposed revenues represent significant new expenditures;

(ii) an application for a new outpatient program shall be considered as fully impacting the State share of local assistance or Medicaid; and

(iii) outpatient programs in a mental health special needs plan authorized pursuant to section 31.33 of the Mental Hygiene Law and section 4403-d of the Public Health Law shall not impact the State share of Medicaid, unless such outpatient program will bill the Medicaid program on a fee-for-service basis].

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

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

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

Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to repeal a provision that will no longer be applicable to any party, and it is otherwise non-controversial. Pursuant to Section 31.22 of the Mental Hygiene Law, the Office of Mental Health (OMH) is authorized to grant operating certificates to providers of mental health services upon such provider's demonstration of satisfaction of five statutory criteria, including the financial resources of the provider of services and its sources of future revenues. Paragraph (3) of subdivision (b) of 14 NYCRR Section 551.13 was initially enacted approximately a decade ago as a means for putting parameters on determinations of fiscal viability when considering applications for outpatient projects. OMH has determined that such requirement is no longer an essential criterion when making this determination and that removing same may facilitate the growth of new or expanded outpatient programs. Hence, since this requirement will no longer be applicable to any party, and is otherwise non-controversial, the amendment is appropriately filed as a Consensus rule.

Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 31.02 of the Mental Hygiene Law requires that a provider of services must be issued an operating certificate in order to engage in the following activities: a residential facility, a freestanding psychiatric inpatient facility; part of a general hospital providing inpatient or nonresidential services; outpatient or nonresidential program; residential treatment facility for children and youth; or comprehensive psychiatric emergency program which serves individuals diagnosed with a mental illness.

Section 31.04 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction and to establish procedures for the issuance and amendment of operating certificates.

Section 31.05 of the Mental Hygiene Law establishes criteria for the issuance of an operating certificate.

Section 31.22 of the Mental Hygiene Law establishes criteria for the approval of certain certificates of incorporation.

Section 31.23 of the Mental Hygiene Law establishes criteria for the approval of facility programs, services and sites.

Job Impact Statement

It is clear from the nature of this regulatory amendment, which simply removes a specific requirement that the Office of Mental Health has determined is no longer necessary when reviewing applications for outpatient projects, that there will be no adverse impact on jobs or employment opportunities in New York State.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

25 and 60 Hertz Service by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-09-08-00004-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 Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 207—Electricity, to become effective April 28, 2008.

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

Subject: 25 and 60 hertz service.

Purpose: To eliminate service classification No. 5—combined 25 and 60 hertz service, and rule No. 31—additional rules and regulations—25 hertz service, and to modify rule No. 43—transmission revenue adjustment.

Substance of proposed rule: The Commission is considering Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) request to eliminate tariff provisions that are no longer applicable to its customers. Niagara Mohawk proposes to (1) cancel Service Classification (SC) No. 5—Combined 25 and 60 Hertz Service; (2) cancel Rule No. 31—Additional Rules and Regulations—25 Hertz Service; and (3) modify Rule No. 43—Transmission Revenue Adjustment (Rule No. 43); and (4) remove applicable references to SC No. 5 contained in its tariff. Niagara Mohawk proposes to cancel SC No. 5 because there are no customers currently taking this service and no new customers can be enrolled in this service classification. Niagara Mohawk also proposes to modify Rule No. 43 so that the portion of the transmission revenue adjustment, previously allocated to SC No. 5 customers, be equally divided between SC No. 3—Primary and SC No. 3A—Subtransmission where the majority of the former SC No. 5 load was transferred. The proposed filing has an effective date of April 28, 2008. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk'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-0114SA1)

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

Transmission and Distribution of Gas by Empire State Pipeline

I.D. No. PSC-09-08-00005-P

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

Proposed action: Empire State Pipeline has petitioned for a waiver of certain requirements of the commission's rules and regulations, 16 NYCRR Part 255—Transmission and Distribution of Gas. The commission may approve, deny or modify the waiver with or without public hearings.

Statutory authority: Public Service Law, section 66(2)

Subject: Transmission and distribution of gas.

Purpose: To grant Empire State Pipeline a waiver of the commission's requirement that pipeline operators revise the maximum allowable operating pressure (MAOP) to be commensurate with the present class location, and allow the operator to follow alternate risk control activities that will provide a comparable margin of safety.

Substance of proposed rule: Empire State Pipeline (Empire) seeks a waiver of the requirements of 16 NYCRR 255.611(b), which prescribes the requirements for operating natural gas pipeline segments that have undergone an increase in class location due to development of properties in proximity to the pipeline. The regulation requires the pipeline operator to either replace the section of pipe or reduce the maximum allowable operating pressure so the hoop stress is commensurate with the present class location.

The intent of the waiver is to allow the affected segments of the Empire State Pipeline to continue to operate at current stress levels thereby avoiding pressure reduction which would reduce delivery volumes of natural gas to downstream customers and allow avoidance of pipe replacement costs. The operator proposes alternative risk management measures, as a condition of the waiver, to evaluate and demonstrate the integrity of the pipeline. The proposed alternative inspection and testing methods include direct assessment on each segment to inspect the condition of the pipeline and its protective coating, annual instrumented leakage surveys and quarterly High Consequence Area (HCA) patrols over the entire pipeline. Close interval surveys in the two affected areas will also provide detailed information regarding the effectiveness of the cathodic protection system, which is designed to prevent pipeline corrosion, in those areas.

The information that Empire State Pipeline compiles from these inspections will allow the operator to make informed decisions regarding risk reduction over the entire length of the pipeline and will provide a margin of safety that is equal to or greater than complying with the current rules.

These alternative risk management measures will not replace any of Empire's assessments for other HCA's under 16 NYCRR Part 255.

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

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

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

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

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

(07-G-1536SA1)

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

Door-to-Door Sales Practices by National Fuel Gas Distribution Corporation

I.D. No. PSC-09-08-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a proposal filed by National Fuel Gas Distribution Corporation (the company) to incorporate by reference standards for door-to-door marketing practices of Energy Service Companies (ESCOs) in its schedule for gas service—P.S.C. No. 8 to become effective April 25, 2008.

Statutory authority: Public Service Law, sections 2(11), 5, 64 and 66(12)

Subject: Standards governing door-to-door sales practices by ESCOs operating in the company's service territory.

Purpose: To consider the addition of a section to the company's tariff requiring ESCOs to comply with standards governing door-to-door sales of natural gas.

Substance of proposed rule: On January 28, 2008, National Fuel Gas Distribution Corporation (National Fuel or the company) filed a proposed tariff amendment to its S.C. No. 19—Supplier Transportation, Balancing and Aggregation Service. The proposed revision would add a section to National Fuel's gas tariff schedule requiring Energy Service Companies (ESCOs) doing business in the company's service territory to comply with Standards Governing Door-to-Door Sales. The "Standards" would be set forth in the company's Gas Transportation Operations Procedure Manual. The Commission may approve, reject or modify, in whole or in part, National Fuel's proposed tariff revision.

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

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

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

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

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

(08-G-0078SA1)

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

Franchise Renewal by Time Warner Entertainment-Advance/Newhouse Partnership

I.D. No. PSC-09-08-00007-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 is considering a request by Time Warner Entertainment-Advance/Newhouse Partnership for clarification or reconsideration, in whole or in part, or modification of an order approving renewal for a cable franchise with the City of Cohoes that conditioned language under which the franchise can be terminated by a change in the law.

Statutory authority: Public Service Law, sections 219(1) and 222(4)

Subject: Franchise renewal.

Purpose: To consider Time Warner's request for clarification or reconsideration of certain aspects of its cable television franchise with the City of Cohoes.

Substance of proposed rule: The New York Public Service Commission is considering a request by Time Warner Entertainment-Advance/Newhouse Partnership for clarification or reconsideration, in whole or in part, or modification of an Order Approving Renewal for a cable franchise with the City of Cohoes that conditioned language under which the franchise can be terminated by a change in the law.

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.

(00-V-2091SA1)

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

Water Rates and Charges by Aqua New York, Inc.

I.D. No. PSC-09-08-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by Aqua New York, Inc. to consolidate its five small water company tariffs into a single tariff, increase rates, and implement a new rate design to become effective May 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 consolidate tariffs, increase rates and implement a new rate design for Aqua New York, Inc.

Substance of proposed rule: On February 7, 2008, Aqua New York, Inc. (Aqua NY or the company) electronically filed Original Leaf Nos. 1-15 to tariff schedule P.S.C. No. 1 — Water. The proposed filing would consolidate Aqua NY's recently acquired five small water company tariffs (Cambridge Water Works Company, Inc., Dycker Water Company, Inc., Kingsvale Water Company, Inc., Waccabuc Water Works, Inc., and Wild Oaks Water Company, Inc.) into a single tariff under a common rate design. The company also proposes to increase its consolidated annual operating revenues by \$300,000 or approximately 59%. Aqua NY's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us located under Commission Documents). The company provides metered water service to approximately 1,035 customers in the Village of Cambridge, portions of the towns of Jackson and White Creek, Washington County; the Town of Sommers, Hamlet of Lincolndale, Development known as The Willows, Town of Lewisboro, Developments known as Indian Hill, Wild Oaks Park in Goldens Bridge, Katonah Close Guilford Circle, The Glen at Lewisboro, Cedar Woods and Deer Tract Lane and Nash Road, Westchester County; and, the Town of Ulster, Developments known as Whittier, Deer Run and parts of Kuku Lane, Ulster County. 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: Jaelyn 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.

(08-W-0107SA1)

Department of State

EMERGENCY RULE MAKING

Manufactured Homes

I.D. No. DOS-47-07-00018-E

Filing No. 135

Filing date: Feb. 11, 2008

Effective date: Feb. 11, 2008

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

Action taken: Addition of Part 1210 to Title NYCRR.

Statutory authority: Executive Law, section 604

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve the general welfare and because time is of the essence. This rule implements the provisions of article 21-B (Manufactured Homes) of the Executive Law, which was added by chapter 729 of the Laws of 2005, and which became effective on Jan. 1, 2006. This rule establishes procedures for obtaining the manufacturer's warranty seals and installer's warranty seals required by article 21-B of the Executive Law; establishes standards regarding the initial training, certification, and continuing education of manufacturers, retailers, installers, and mechanics of manufactured homes; establishes procedures for the resolution of disputes relating to manufactured homes; and otherwise implements the provisions article 21-B of the Executive Law. Adoption of this rule on an emergency basis preserves the general welfare by permitting the continuation of all aspects of the manufactured housing industry in this State without interruption.

Subject: Obtaining and attaching manufacturer's warranty seals and installer's warranty seals to manufactured homes; certification of manufacturers, retailers, installers, and mechanics of manufactured homes; and administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes.

Purpose: To implement article 21-B of the Executive Law, as added by chapter 729 of the Laws of 2005.

Substance of emergency rule: Chapter 729 of the Laws of 2005 added Article 21-B (Manufactured Homes) of the Executive Law. This rule has been adopted to implement the provisions of Article 21-B. This rule establishes procedures for obtaining and the manufacturer's warranty seals and installer's warranty seals which must be attached to manufactured homes. This rule establishes the qualifications for certification of manufacturers, retailers, installers, and mechanics of manufactured homes. This rule establishes administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes. This rule also establishes fees relating to warranty seals, certifications, approval of instructional providers and approval of courses.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. DOS-47-07-00018-P, Issue of November 21, 2007. The emergency rule will expire April 10, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: joseph.ball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

The statutory authority for this rule is Executive Law section 604, as added by Chapter 729 of the Laws of 2005. Executive Law section 604 provides that the Department of State (the Department) has the power and duty to promulgate rules and regulations relating to the provisions of Article 21-B of the Executive Law (Article 21-B). Article 21-B applies to persons and business entities engaged in the manufacture, sale, installation and service of manufactured homes, and requires that such persons and business entities be certified by the Department. This rule implements Article 21-B.

2. LEGISLATIVE OBJECTIVES.

Article 21-B was enacted for the purpose of ensuring that manufactured homes are installed and serviced in a professional manner; ensuring that disputes regarding the manufacture, installation, and servicing of manufactured homes be resolved fairly and expeditiously; providing a degree of security for the payment of legitimate claims; and otherwise implementing the provisions of the federal Manufactured Housing Improvement Act of 2000 (PL 106-569). The Manufactured Housing Improvement Act of 2000 requires States to enact requirements for the licensing or certification of installers of manufactured homes, training, dispute resolution, and other matters relating to manufactured homes. Article 21-B requires manufacturers and installers to attach warranty seals to manufactured homes installed in this State, requires manufacturers, retailers, installers, and mechanics to be certified by the Department, and requires the Department to provide administrative procedures for the resolution of disputes.

This rule establishes procedures for obtaining and attaching the warranty seals required by Article 21-B; establishes standards for certification as a manufacturer, retailer, installer, or mechanic of manufactured homes; establishes administrative dispute resolution procedures; and establishes fees.

3. NEEDS AND BENEFITS.

This rule establishes procedures regarding manufacturer's and installer's warranty seals. These procedures are necessary to implement the warranty seal provisions of Article 21-B. These provisions permit manufacturers and installers to obtain the warranty seals, specify the manner in which and place where the warranty seals are to be attached, establish the fees to be paid by manufacturers and installers for obtaining the warranty seals, and establish the maximum fees that can be charged by manufacturers and installers for attaching the warranty seals.

This rule establishes qualifications and procedures for obtaining certification as a manufacturer, retailer, installer, or mechanic. These qualifications and procedures are necessary to implement the certification provisions of Article 21-B. The qualifications established by this rule include minimum experience and education requirements for retailers, installers, and mechanics; initial training requirements for installers and mechanics; and continuing education requirements for all classes of certificate holders. These provisions in this rule will benefit purchasers of manufactured homes by helping to ensure that homes will be installed in a professional manner.

This rule requires each certificate holder to file a deposit account control agreement ("DACA") evidencing the existence of a deposit account which is maintained with a financial institution and which is pledged to the Department, a letter of credit ("LOC"), or a surety bond. (However, a person holding a limited certificate will not be required to file his or her own DACA, LOC, or surety bond if he or she is covered by his or her employer's DACA, LOC, or surety bond). These financial responsibility requirements will benefit owners of manufactured homes by providing a measure of assurance that legitimate claims relating to the delivered condition, installation, service, or construction of a manufactured home will be satisfied.

The rule establishes procedures for the resolution of disputes involving the delivered condition, installation, service or construction of manufactured homes. These procedures are necessary to implement the dispute resolution provisions of Article 21-B. These procedures will benefit manufacturers, retailers, installers, mechanics, lending entities, and manufactured home owners by permitting expeditious and cost-effective resolution of disputes.

The rule establishes fees, as required by Article 21-B. The fees will defray the cost of administering Article 21-B.

4. COSTS.

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

This rule will require manufacturers and installers to obtain warranty seals to be attached to manufactured homes. Manufacturers will pay \$125 per seal. Installers will pay \$35 per seal if they request 5 or fewer, or \$25 per seal if they request 6 or more. This rule will also permit manufacturers and installers to charge purchasers a fee for attaching such seals; such fees will cover the manufacturer's and installer's costs of obtaining the seals and an additional sum (between \$15 and \$25) to cover anticipated administrative expenses.

This rule will require manufacturers, retailers, installers, and mechanics to be certified by the Department. The fee for certification for a period of 2 years will be \$200 for manufacturers, retailers, and installers, and \$100 for mechanics. However, a person employed by a person who or a business entity which is certified may apply for a limited certificate, which is valid only while such person is acting within the scope of his or her

employment by his or her certified employer. The fee for limited certification for a period of 2 years will be \$25.

A certified party (other than a person holding a limited certificate) must file a DACA, LOC, or surety bond with the Department. The Department estimates that the premiums to be paid for a surety bond having a term of 2 years will be between \$800 and \$1,200 for the \$50,000 surety bond filed by a manufacturer, between \$400 and \$600 for the \$25,000 surety bond filed by a retailer, approximately \$200 for the \$10,000 surety bond filed by an installer, and approximately \$200 for the \$5,000 surety bond filed by a mechanic. The Department estimates that the fee for obtaining a LOC will typically be 1% of the face amount of the LOC per year, subject to a minimum fee of \$100 per year; this indicates that the fee for a \$50,000 LOC will be \$500 per year (or \$1,000 for 2 years), the fee for a \$25,000 LOC will be \$250 per year (or \$500 for 2 years), the fee for a \$10,000 LOC will be \$100 per year (or \$200 for 2 years), and the fee for a \$5,000 LOC will be \$100 per year (or \$200 for 2 years).

A person certified as an installer will be required to complete 16 hours of initial training prior to certification, and a business entity certified as an installer will be required to employ at least one person who has completed such initial training and who is certified by the Department. The Department estimates that the fees charged by instructional providers who provide such initial training will be between \$200 and \$300.

A person certified as a mechanic will be required to complete 6 hours of initial training prior to certification, and a business entity certified as a mechanic will be required to employ at least one person who has completed such initial training and who is certified by the Department. The Department estimates that the fees charged by instructional providers who provide such initial training will be between \$100 and \$125.

A person certified as a manufacturer, retailer, installer, or mechanic will be required to complete 3 hours of continuing education every 2 years, and a business entity certified as a manufacturer, retailer, installer, or mechanic will be required to employ at least one person who has completed such continuing education and who is certified by the Department. The Department estimates that the fees charged by instructional providers who provide such continuing education will be approximately \$50.

A private trade association or other entity applying for approval as an instructional provider will be required to pay \$100 once every 2 years. An approved instructional provider applying for approval of a course it wishes to provide will be required to pay \$50 plus \$5 for each student who takes the course.

b. Costs to the Department:

The Department anticipates that the cost to the Department to administer the programs contemplated by Article 21-B will be approximately \$490,000 per year. Those costs include the costs associated with the 5 employees that the Department anticipates it will need to administer the programs. The costs of administering Article 21-B are largely attributed to the statute and not significantly to this implementing rule.

c. Costs to other State agencies:

This rule does not impose any costs on other State agencies.

d. Cost to local governments:

This rule does not impose any costs on local governments.

5. PAPERWORK.

Under this rule, manufacturers and installers will be required to file written requests for warranty seals; manufacturers will be required to file quarterly reports of homes completed; installers will be required to file quarterly reports of installations performed; manufacturers, retailers, installers, and mechanics will be required to file written applications for certification and for periodic renewal of certification; a private trade organization or other entity wishing to provide initial training or continuing education will be required to file a written application for approval as an instructional provider and for periodic renewals of such approval; approved instructional providers will be required to file written applications for approval or courses to be provided; and instructional providers will be required to file reports of each course presented. It is the intention of the Department to develop and implement request, application, and report forms, to post such forms on the Department's web page, and otherwise to make such forms freely available to regulated parties.

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any duty on local governments.

7. DUPLICATION.

The Department is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

8. ALTERNATIVES.

The Department considered adopting provisions requiring individuals applying for certification as a retailer, installer or mechanic to have at least a high school diploma. This alternative was not adopted in this rule because such a requirement would preclude a person who holds a high school equivalency diploma, or the equivalent certification from the United States Armed Forces, from acting as a retailer, installer, or mechanic.

The Department considered adopting provisions making the filing of a surety bond the only permissible means of satisfying the financial responsibility requirements. This alternative was not adopted in this rule because such a provision would preclude the use of other acceptable instruments (viz., letters of credits and deposit account control agreements) to satisfy the financial responsibility requirements.

The Department considered adopting provisions setting financial responsibility requirements at levels higher or lower than those specified in this rule (viz., \$50,000 for a manufacturer, \$25,000 for a retailer, \$10,000 for an installer, and \$5,000 for a mechanic). The alternative of setting higher financial responsibility requirements was not adopted in this rule because the Department believes that increasing those requirements would increase the cost of obtaining the required surety bond, letter of credit or deposit account control agreement (which, in turn, would increase the costs to be passed on to homeowners), and may make it more difficult, or even impossible, for some individuals to obtain the required surety bond, letter of credit, or deposit control agreement (which, in turn, would limit homeowner's options in choosing installers and mechanics). The alternative of setting lower financial responsibility requirements was not adopted because the Department believes that lowering those requirements would not provide adequate protection to the owner of a manufactured home with a substantial defect in its delivered condition, installation, service or construction.

9. FEDERAL STANDARDS.

The Department is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE.

This rule can be complied with immediately. Rules substantially similar to this rule have been in effect since December 22, 2005. Previous versions of this rule established the qualifications for certification, and provided regulated parties with the information necessary to apply for and obtain the required certification prior to the date certification was first required (July 1, 2006). This rule continues, without substantial change, the qualifications for certification first established on December 22, 2005.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule applies to all persons and all business entities who manufacture, sell, install, or service manufactured homes, including all small businesses that manufacturer, sell, install, or service manufactured homes. The Department of State estimates that this rule will apply to approximately 268 small businesses engaged in the retail selling of manufactured homes and approximately 100 small businesses engaged in the installation manufactured homes for buyers. This rule will also apply to small businesses that "service" (*i.e.*, modify, alter or repair the structural systems of) manufactured homes; however, the Department of State is unable to determine at this time the number of small businesses that service manufactured homes. This rule will also apply to any small business that manufactures or produces manufactured homes. The Department of State estimates that this rule will apply to approximately 36 manufacturers; however, the Department of State believes that few, if any, of such manufacturers are small businesses.

This rule does not apply directly to local governments. However, this rule does specify that no certificate of occupancy shall be issued for any manufactured home installed on or after January 1, 2006 unless the required warranty seals have been attached to the home. This provision will affect every local government that issues certificates of occupancy.

2. COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacturer's warranty seal is not required.)

This rule requires manufacturers and installers to file quarterly reports with the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. The qualifications for obtaining and retaining certification include (1) the filing of a surety bond, letter of credit, or

deposit account control agreement; (2) having have at least a high school education, or the equivalent; (3) satisfying specified experience requirements; (4) satisfying specified initial training requirements; (5) in the case of an installer or mechanic, passing a written examination; and (6) satisfying specified continuing education requirements. In addition, a certified manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes.

Each certified business entity must employ at least one certified person.

At least one person certified by the Department of State as an installer must be present at the home site during the installation or a manufactured home.

At least one person certified by the Department of State as a mechanic must be present at the home site during the performance of any service.

Any person or business entity owning or operating more than one manufacturing plant that manufactures, delivers, or sells manufactured homes in the State of New York shall be required to obtain a separate certification as a manufacturer for each such manufacturing plant.

Any person or business entity owning or operating more than one retail sales location in the State of New York shall be required to obtain a separate certification as a retailer for each such retail sales location.

This rule establishes requirements for approval of instructional providers.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule) and the installer's warranty seal has been attached to such manufactured home.

3. PROFESSIONAL SERVICES.

Professional services are not likely to be required to comply with the reporting, record keeping and other requirements of this rule.

4. COMPLIANCE COSTS.

Manufacturers will be required to pay \$125 for each manufacturer's warranty seal, and will be permitted to charge up to \$150 for attaching a seal to a manufacture home.

Installers will be required to pay between \$25 and \$35 for each installer's warranty seal, and will be permitted to charge up to \$50 for attaching a seal to a manufacture home.

The initial cost of obtaining certification will include (1) the cost of obtaining the required surety bond, letter of credit, or deposit account control agreement, (2) the certification fee to be paid to the Department of State, and (3) in the case of certification as an installer or mechanic, the cost of the required initial training. The Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between \$1,000 and \$1,400, the initial cost of obtaining certification as a retailer will be between \$600 and \$800, the initial cost of obtaining certification as an installer will be between \$600 and \$700, and the initial cost of obtaining certification as a mechanic will be between \$400 and \$425.

A person applying for a limited certificate is not required to provide his or her own surety bond, letter of credit, or deposit account control agreement. In addition, the fee to be paid to the Department of State for a limited certificate is lower than the fee to be paid for a corresponding non-limited certificate. The Department of State estimates that the initial cost of obtaining limited certification as a manufacturer or retailer will be \$25, the initial cost of obtaining limited certification as an installer will be between \$225 and \$325, and the initial cost of obtaining limited certification as a mechanic will be between \$125 and \$150.

The cost of maintaining certification will include (1) the cost of renewing the required surety bond, letter of credit, or deposit account control agreement, (2) the renewal fee to be paid to the Department of State, and (3) the cost of the required continuing education courses. The Department of State estimates that the cost of maintaining certification as a manufacturer will be between \$1,050 and \$1,450 every 2 years (or between \$525 and \$725 per year), the cost of maintaining certification as a retailer will be between \$650 and \$850 every 2 years (or between \$325 and \$425 per year), the cost of maintaining certification as an installer will be \$450 every 2 years (or \$225 per year), and the cost of maintaining certification as a mechanic will be \$350 every 2 years (or \$175 per year).

A person holding a limited certificate will not incur the expense of renewing his or her own surety bond, letter of credit or deposit account control agreement. In addition, the fee to be paid to the Department of State to renew a limited certificate will be less than the fee to be paid to renew a corresponding non-limited certificate. The Department of State

estimates that the cost of maintaining limited certification in any category (manufacturer, retailer, installer or mechanic) will be \$75 every 2 years (or \$37.50 per year).

The foregoing compliance costs are not likely to vary significantly by reason of the size of the business.

Local governments are not likely to incur any costs in complying with this rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State will print the warranty seals required by this rule. The Department of State has already prepared all or most of the application forms that will be required by this rule, and has posted such forms on the Department's web page. The Department will otherwise make such forms freely available to the regulated parties. The Department of State believes that it will be economically and technologically feasible for small businesses to comply with this rule.

6. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the size of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for small businesses than for it will be for larger businesses. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry.

The Department of State notified interested parties throughout the State of the adoption of the previous emergency rules that were similar to this rule by means of notices published in *Building New York*, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. The Department of State will publish a notice of the proposed adoption of this rule on a permanent basis in a future edition of *Building New York*. In addition, the Department of State has posted the full text of this rule on the Department's website.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements Article 21-B of the Executive Law. Both Article 21-B and this rule apply uniformly throughout the State, including all rural areas of the State.

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

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacturer's warranty seal is not required.) The seals are to be requested in writing, on a form to be supplied by or otherwise acceptable to the Department of State.

This rule requires manufacturers to file quarterly reports with the Department of State specifying, with respect to each manufactured home completed by the manufacturer during the reporting period covered by such report, the type or model of such manufactured home and, if applicable, the name and address of the retailer to which such manufactured home was delivered. The quarterly reports are to be filed on forms provided by or otherwise acceptable to the Department of State.

This rule requires installers to file quarterly reports with the Department of State specifying, with respect to each manufactured home installed by the installer during the reporting period covered by such report, the location where such manufactured home was installed, the owner of such manufactured home at the time of installation, the type or model of such manufactured home, the manufacturer of such manufactured home; and the written certification of the installer that the installation of such manufactured home meets the standards of the New York State Uniform Fire Prevention and Building Code. The quarterly reports are to be filed on forms provided by or otherwise acceptable to the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. Applications for certification are to be in writing, on forms provided by or otherwise acceptable to the Department of State. The qualifications for obtaining and retaining certification are

summarized in paragraph 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

This rule requires any private trade association or other entity wishing to provide initial training courses or continuing education courses to apply to the Department of State for approval as an instructional provider. This rule requires approved instructional providers to apply to the Department of State for approval of each course it proposes to provide. All applications are to be submitted in writing, on forms provided by or otherwise acceptable to the Department of State. Instructional providers are required to keep records showing the date and location of each course presentation and the names and addresses of each student taking the course, and to file reports showing such information with the Department of State.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal required by this rule has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule), the installer's warranty seal required by this section has been attached to such manufactured home, and the governmental agency or department or other person or entity responsible for issuing certificates of occupancy has independently determined that such manufactured home has been installed in accordance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code.

Professional services are not likely to be required in rural areas in order to comply with the reporting, record keeping and other compliance requirements imposed by this rule.

3. COSTS.

Manufacturers will be required to pay \$125 for each manufacturer's warranty seal, and will be permitted to charge up to \$150 for attaching a seal to a manufacture home.

Installers will be required to pay between \$25 and \$35 for each installer's warranty seal, and will be permitted to charge up to \$50 for attaching a seal to a manufacture home.

The initial cost of obtaining certification will include (1) the cost of obtaining the required surety bond, letter of credit, or deposit account control agreement, (2) the certification fee to be paid to the Department of State, and (3) in the case of certification as an installer or mechanic, the cost of the required initial training. The Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between \$1,000 and \$1,400, the initial cost of obtaining certification as a retailer will be between \$600 and \$800, the initial cost of obtaining certification as an installer will be between \$600 and \$700, and the initial cost of obtaining certification as a mechanic will be between \$400 and \$425.

A person applying for a limited certificate is not required to provide his or her own surety bond, letter of credit, or deposit account control agreement. In addition, the fee to be paid to the Department of State for a limited certificate is lower than the fee to be paid for a corresponding non-limited certificate. The Department of State estimates that the initial cost of obtaining limited certification as a manufacturer or retailer will be \$25, the initial cost of obtaining limited certification as an installer will be between \$225 and \$325, and the initial cost of obtaining limited certification as a mechanic will be between \$125 and \$150.

The cost of maintaining certification will include (1) the cost of renewing the required surety bond, letter of credit, or deposit account control agreement, (2) the renewal fee to be paid to the Department of State, and (3) the cost of the required continuing education courses. The Department of State estimates that the cost of maintaining certification as a manufacturer will be between \$1,050 and \$1,450 every 2 years (or between \$525 and \$725 per year), the cost of maintaining certification as a retailer will be between \$650 and \$850 every 2 years (or between \$325 and \$425 per year), the cost of maintaining certification as an installer will be \$450 every 2 years (or \$225 per year), and the cost of maintaining certification as a mechanic will be \$350 every 2 years (or \$175 per year).

A person holding a limited certificate will not incur the expense of renewing his or her own surety bond, letter of credit or deposit account control agreement. In addition, the fee to be paid to the Department of State to renew a limited certificate will be less than the fee to be paid to renew a corresponding non-limited certificate. The Department of State estimates that the cost of maintaining limited certification in any category (manufacturer, retailer, installer or mechanic) will be \$75 every 2 years (or \$37.50 per year).

Such costs are not likely to vary significantly for different types of public and private entities in rural areas. An installer who requests fewer

than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the fee for a letter of credit or premium for a surety bond may be dependent, in part, on the location of the business for which the letter of credit or surety bond is issued.

4. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the location of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for regulated parties located in rural areas than for it will be for regulated parties located in suburban or metropolitan areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry.

The Department of State notified interested parties throughout the State of the previous emergency adoption of this rule, and the adoption of the previous emergency rules that were similar to this rule, by means of notices published in *Building New York*, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. In addition, the Department of State has posted the full text of this rule on the Department's website.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule establishes the procedures for obtaining and attaching the manufacturer's warranty seal and installer's warranty seal required by Article 21-B of the Executive Law, the fees to be paid by the manufacturer and installer to obtain the warranty seals, and the maximum fees that may be charged to the customer for attaching the warranty seals to the manufactured home. The maximum fee that may be charged to a customer for attaching the required seals will be \$200. The typical delivered and installed cost of a manufactured home in this State is approximately \$70,000. Therefore, the cost of the warranty seals will be less than 0.3% of the cost of a home, and the statutory requirement that warranty seals be attached, as implemented by this rule, should not have a substantial impact on the market for manufactured homes or on jobs or employment opportunities in the manufactured home industry.

This rule also establishes procedures for determination of certain disputes regarding manufactured homes by the Department of State. Article 21-B directs the Department of State to establish such procedures. It is anticipated that by providing for administrative determination of disputes, this rule will reduce the litigation expenses for all parties involved in such disputes. Therefore, the statutory requirement that the Department of State provide for administrative resolution of disputes, as implemented by this rule, should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

This rule also established the qualifications for obtaining certification as a manufacturer, retailer, installer, or mechanic of manufactured homes. A person or business entity applying for certification will incur the following costs:

(1) Generally, the cost of obtaining a certification will be \$100 per year in the case of a manufacturer, retailer, and installer, and \$50 per year in the case of a mechanic. However, a person who is employed by a person who or a business entity which is certified may apply for a limited certification, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer; the cost of obtaining such a limited certificate will be \$12.50 per year.

(2) Installers and mechanics may be required to pay fees to the instructional providers who present the initial training courses required for certification, and all certificate holders may be required to pay fees to the instructional providers who present the continuing education courses required to maintain certified status.

(3) Generally, each certificate holder will be required to file a deposit account control agreement, letter of credit, or surety bond. Those certificate holders who file a letter of credit will be required to pay fees to the financial institutions that issue such letters of credit, and those certificate holders who file a surety bond will be required to pay premiums to the

insurance companies that issue such bonds. However, the holder of a limited certificate will not be required to file a deposit account control agreement, letter of credit, or surety bond, provided that his or her certified employer has filed an acceptable deposit account control agreement, letter of credit, or surety bond.

It is anticipated that the total cost of certification, instruction, and bonding will be relatively modest, particularly when these costs are spread over all the units manufactured by a certified manufacturer, sold by a certified retailer, installed by a certified installer, or serviced by a certified mechanic, during the course of a year. Therefore, the statutorily mandated certification process, as implemented by this rule, should not add a significant sum to the total cost of a manufactured home in this State, and should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Warning Lamp Requirements for Nondivisible Load Permitted Vehicles

I.D. No. TRN-09-08-00003-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 154-1.14 of Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 385(15); Transportation Law, section 14(18)

Subject: Modification of the warning lamp requirements for nondivisible load permitted vehicles.

Purpose: To remove language requiring vehicle headlights to be on during daylight operation, consistent with Federal regulations.

Text of proposed rule: Section 1. The opening paragraph of Section 154-1.14 of Subpart 154-1 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

All vehicle headlights and other steady burning exterior lights shall be turned *on* for both the [permitted load] certified escort and escort vehicle. Additional lights are required as follows:

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

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

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

Consensus Rule Making Determination

The Department of Transportation annually issues approximately 100,000 special hauling permits to over 5000 customers. Since April 2006, The Department has been meeting with customers and with associations that represent the trucking industry, as well as holding a number of listening forums, in an attempt to identify problems with the existing permitting process for hauling permits.

Industry identified a problem associated with recent changes in State and Federal laws covering operation of commercial vehicles. When operators comply with current permitting regulations, they may be in violation of Federal laws covering lighting.

This proposed revision to Section 154-1.14 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York will remove the conflicting provision in New York law that requires special hauling permitted vehicles have headlights on during the day. Based on comments received so far, the Department anticipates that the industry and individual permit applicants will support this proposal and that the Department will receive no substantive comments in opposition.

Accordingly, the Department is treating this proposed change as a consensus rule making.

Job Impact Statement

This is a proposed revision to Section 154-1.14 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York to modify warning lamp requirements for permitted vehicles. Since this proposal involves a minor change removing a conflict between state and federal laws, a job impact statement has not been submitted. The proposed regulation will not have any adverse impact on jobs.