

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.

Banking Department

NOTICE OF EXPIRATION

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

Licensed Money Transmitters

I.D. No.	Proposed	Expiration Date
BNK-52-06-00002-P	December 27, 2006	December 27, 2007

Office of Children and Family Services

EMERGENCY RULE MAKING

Market Rates for Subsidized Child Care

I.D. No. CFS-43-07-00012-E
Filing No. 1446
Filing date: Dec. 31, 2007
Effective date: Dec. 31, 2007

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

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

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

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

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary for the preservation of the health, safety and welfare of children in need of subsidized child care services in this State. Section 410-x(4) of the Social Services Law requires that the market rates be sufficient to ensure equal access to eligible children to comparable day care available to children whose parents are not eligible to receive a subsidy. The current market rates were initially issued in October, 2005 and reflect rate data collected in 2005. Accordingly, the current rates are artificially low. The adjustments to the market rates are needed to address the escalating costs of providing child care services.

Continuing to maintain the existing rates could result in subsidized families losing their child care arrangements or being unable to find appropriate child care. As a result, such families could be forced to place their children in child care settings that are inappropriate or unsafe for their children, leave their children unsupervised, or leave their jobs or training programs. If they choose the latter option, the families may remain on public assistance for longer periods of time or return to public assistance. This would directly counter the overriding purpose of welfare reform to encourage families on public assistance to move into employment or training programs. Thus, the increases in the market rates are necessary to maintain and preserve the gains achieved for poor families under welfare reform. As a result of these regulations, public assistance recipients and other low income families will not have to decide between losing their employment income and placing their children in child care that is unsafe or inappropriate.

Delaying the adoption of these regulations would be contrary to the public interest because it could result in children from public assistance or other low income families receiving unhealthy or unsafe child care, or in persons leaving jobs or training programs and returning to public assistance, to the detriment of the public welfare system. Further, the Federal Administration for Children and Families has indicated that the New York State Child Care and Development Fund Plan cannot be approved unless child care market rates have been adjusted, based upon a market rate survey, effective October 1, 2007. Unless new market rates become effective on that date, the State's ability to use over \$650 million in Federal

funds under CCDF and to transfer funds into CCDF for child care subsidies will be jeopardized. Therefore, it is necessary to adopt these regulations on an emergency basis.

Subject: Market rates for subsidized child care.

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

Text of emergency rule: Section 415.9(j) is amended to read as follows and a new rate schedule is added to read as follows:

(1) Effective October 1, [2005] 2007, following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

(2) The market rates are established in five groupings of social services districts. Except for districts noted as an exception in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

Group A: Nassau, Putnam, Rockland, Suffolk, Westchester

Group B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren

Group C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates

Group D: Albany, Dutchess, Orange, Ulster

Group E: Bronx, Kings, New York, Queens, Richmond

GROUP A COUNTIES:

Nassau, Putnam, Rockland, Suffolk, and Westchester

DAY CARE CENTER

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$314	\$280	\$250	\$262
Exceptions:				
<i>Westchester</i>	\$378	\$331	\$274	--
DAILY	\$70	\$62	\$55	\$54
Exceptions:				
<i>Nassau</i>	\$75	\$77	--	--
<i>Suffolk</i>	\$80	\$70	--	--
<i>Westchester</i>	\$75	\$70	\$58	--
PART-DAY	\$47	\$41	\$37	\$36
Exceptions:				
<i>Nassau</i>	\$50	\$51	--	--
<i>Suffolk</i>	\$53	\$47		
<i>Westchester</i>	\$50	\$47	\$39	--
HOURLY	\$8.88	\$9.48	\$8.81	\$9.17

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$250	\$250	\$250	\$250
Exceptions:				
<i>Putnam</i>	\$300	\$275	\$278	--
<i>Suffolk</i>	\$260	\$263	--	--
<i>Westchester</i>	\$300	--	\$331	--
DAILY	\$56	\$56	\$55	\$50
PART-DAY	\$37	\$37	\$37	\$33
HOURLY	\$8.00	\$8.89	\$7.75	\$8.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$260	\$255	\$250	\$250
Exceptions:				
<i>Rockland</i>	--	--	\$261	--
<i>Westchester</i>	\$275	\$275	\$266	\$276
DAILY	\$58	\$56	\$55	\$56
Exceptions:				
<i>Westchester</i>	--	\$60	\$60	\$60
PART-DAY	\$39	\$37	\$37	\$37
Exceptions:				
<i>Westchester</i>	--	\$40	\$40	\$40
HOURLY	\$8.00	\$8.00	\$8.00	\$8.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$0	\$0	\$0	\$262
DAILY	\$0	\$0	\$0	\$54
PART-DAY	\$0	\$0	\$0	\$36
HOURLY	\$0	\$0	\$0	\$9.17

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$163	\$163	\$163	\$163
DAILY	\$36	\$36	\$36	\$33
PART-DAY	\$24	\$24	\$24	\$22
HOURLY	\$5.20	\$5.78	\$5.04	\$5.20

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$188	\$188	\$188	\$188
DAILY	\$42	\$42	\$41	\$38
PART-DAY	\$28	\$28	\$27	\$25
HOURLY	\$6.00	\$6.67	\$5.81	\$6.00

GROUP B COUNTIES:
Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren

DAY CARE CENTER

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$210	\$200	\$183	\$177
Exceptions:				
<i>Saratoga</i>	--	\$211	\$196	--
DAILY	\$50	\$48	\$43	\$38
Exceptions:				
<i>Erie</i>	--	--	\$44	--
<i>Monroe</i>	\$55	\$52	\$48	--
PART-DAY	\$33	\$32	\$29	\$25
Exceptions:				
<i>Monroe</i>	\$37	\$35	\$32	--
HOURLY	\$7.74	\$7.78	\$6.89	\$7.74

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$150	\$150	\$145	\$136
Exceptions:				
<i>Erie</i>	--	\$161	--	--
<i>Ontario</i>	\$164	\$169	--	--
<i>Saratoga</i>	\$169	\$165	\$160	\$143
<i>Schenectady</i>	\$170	\$160	\$150	\$150
DAILY	\$34	\$35	\$31	\$31
Exceptions:				
<i>Columbia</i>	\$35	--	--	--
<i>Erie</i>	\$38	\$38	\$34	\$34
<i>Saratoga</i>	\$35	--	--	\$33
<i>Warren</i>	--	--	--	\$33
PART-DAY	\$23	\$23	\$21	\$21
Exceptions:				
<i>Erie</i>	\$25	\$25	\$23	\$23
<i>Saratoga</i>	--	--	--	\$22
<i>Warren</i>	--	--	--	\$22
HOURLY	\$5.00	\$5.17	\$5.00	\$4.45

GROUP FAMILY DAY CARE

AGE OF CHILD

	<i>Under 1^{1/2}</i>	<i>1^{1/2}-2</i>	<i>3-5</i>	<i>6-12</i>
WEEKLY	\$170	\$165	\$160	\$160
Exceptions:				
<i>Erie</i>	--	\$175	\$165	--
<i>Schenectady</i>	\$195	\$188	\$186	--
DAILY	\$38	\$35	\$35	\$33
Exceptions:				
<i>Erie</i>	--	--	--	\$34

PART-DAY	\$25	\$23	\$23	\$22
Exceptions:				
Erie	--	--	--	\$23
HOURLY	\$5.00	\$5.14	\$5.14	\$5.00
SCHOOL AGE CHILD CARE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$177
DAILY	\$0	\$0	\$0	\$38
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.74
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$98	\$98	\$94	\$88
DAILY	\$22	\$23	\$20	\$20
PART-DAY	\$15	\$15	\$13	\$13
HOURLY	\$3.25	\$3.36	\$3.25	\$2.89
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$113	\$113	\$109	\$102
DAILY	\$26	\$26	\$23	\$23
PART-DAY	\$17	\$17	\$15	\$15
HOURLY	\$3.75	\$3.88	\$3.75	\$3.34
GROUP C COUNTIES:				
Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates				
DAY CARE CENTER				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$171	\$165	\$155	\$136
Exceptions:				
Niagara	--	--	--	\$138
DAILY	\$40	\$37	\$34	\$31
Exceptions:				
Broome	--	\$40	\$38	--
PART-DAY	\$27	\$25	\$23	\$21
Exceptions:				
Broome	--	\$27	\$25	--
HOURLY	\$5.44	\$5.06	\$5.25	\$5.23
REGISTERED FAMILY DAY CARE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
Exceptions:				
Clinton	--	--	--	\$135
Oneida	--	--	\$130	--
DAILY	\$31	\$31	\$30	\$30
Exceptions:				
Clinton	--	--	--	\$34
Sullivan	--	--	--	\$31
PART-DAY	\$21	\$21	\$20	\$20
Exceptions:				
Clinton	--	--	--	\$23
Sullivan	--	--	--	\$21
HOURLY	\$3.18	\$3.00	\$3.00	\$3.00
GROUP FAMILY DAY CARE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$140	\$130	\$126	\$125
Exceptions:				
Oneida	\$150	\$150	\$135	--
Steuben	--	--	\$135	\$138

Washington	--	--	\$145	\$130
DAILY	\$34	\$33	\$31	\$30
PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$4.00
SCHOOL AGE CHILD CARE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$136
Exceptions:				
Niagara	--	--	--	\$138
DAILY	\$0	\$0	\$0	\$31
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$5.23
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$88	\$85	\$81	\$81
DAILY	\$20	\$20	\$20	\$20
PART-DAY	\$13	\$13	\$13	\$13
HOURLY	\$2.07	\$1.95	\$1.95	\$1.95
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$101	\$98	\$94	\$94
DAILY	\$23	\$23	\$23	\$23
PART-DAY	\$15	\$15	\$15	\$15
HOURLY	\$2.39	\$2.25	\$2.25	\$2.25
GROUP D COUNTIES:				
Albany, Dutchess, Orange, and Ulster				
DAY CARE CENTER				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$227	\$210	\$195	\$185
Exceptions:				
Dutchess	\$250	\$225	\$197	\$223
Orange	--	\$220	--	--
DAILY	\$51	\$47	\$44	\$44
Exceptions:				
Albany	--	\$50	\$45	--
PART-DAY	\$34	\$31	\$29	\$29
Exceptions:				
Albany	--	\$33	\$30	--
HOURLY	\$7.75	\$7.46	\$7.24	\$7.34
REGISTERED FAMILY DAY CARE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$191	\$185	\$175	\$175
Exceptions:				
Dutchess	--	--	--	\$180
Orange	\$200	\$200	\$200	\$200
DAILY	\$44	\$41	\$38	\$38
Exceptions:				
Dutchess	--	\$45	\$44	\$45
Orange	--	--	\$40	\$44
PART-DAY	\$29	\$27	\$25	\$25
Exceptions:				
Dutchess	--	\$30	\$29	\$30
Orange	--	--	\$27	\$29
HOURLY	\$7.00	\$6.00	\$6.00	\$6.10
GROUP FAMILY DAY CARE				
AGE OF CHILD				
	Under 1½	1½ -2	3-5	6-12
WEEKLY	\$200	\$194	\$180	\$178
Exceptions:				
Orange	\$225	--	--	\$189
DAILY	\$45	\$45	\$43	\$40
Exceptions:				
Orange	\$54	--	\$45	\$44

PART-DAY	\$30	\$30	\$29	\$27
Exceptions:				
Orange	\$36	--	\$30	\$29
HOURLY	\$7.50	\$7.00	\$7.00	\$7.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$185
Exceptions:				
Dutchess	--	--	--	\$223
DAILY	\$0	\$0	\$0	\$44
PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$7.34

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$124	\$120	\$114	\$114
DAILY	\$29	\$27	\$25	\$25
PART-DAY	\$19	\$18	\$17	\$17
HOURLY	\$4.55	\$3.90	\$3.90	\$3.98

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$143	\$139	\$131	\$131
DAILY	\$33	\$31	\$29	\$29
PART-DAY	\$22	\$21	\$19	\$19
HOURLY	\$5.25	\$4.50	\$4.50	\$4.59

GROUP E COUNTIES:

Bronx, Kings, New York, Queens, and Richmond

DAY CARE CENTER

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$370	\$255	\$224	\$185
DAILY	\$67	\$67	\$50	\$50
PART-DAY	\$45	\$45	\$33	\$33
HOURLY	\$17.64	\$17.00	\$16.21	\$12.18

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$141
DAILY	\$36	\$39	\$35	\$31
PART-DAY	\$24	\$26	\$23	\$21
HOURLY	\$16.00	\$11.11	\$13.20	\$13.06

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$175	\$175	\$160	\$150
DAILY	\$38	\$38	\$36	\$35
PART-DAY	\$25	\$25	\$24	\$23
HOURLY	\$16.41	\$15.17	\$11.73	\$17.14

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$185
DAILY	\$0	\$0	\$0	\$50
PART-DAY	\$0	\$0	\$0	\$33
HOURLY	\$0	\$0	\$0	\$12.18

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$104	\$98	\$98	\$92
DAILY	\$23	\$25	\$23	\$20
PART-DAY	\$15	\$17	\$15	\$13
HOURLY	\$10.40	\$7.22	\$8.58	\$8.49

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

AGE OF CHILD

	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$120	\$113	\$113	\$106
DAILY	\$27	\$29	\$26	\$23
PART-DAY	\$18	\$19	\$17	\$15
HOURLY	\$12.00	\$8.33	\$9.90	\$9.80

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$ 378
DAILY	\$ 80
PART-DAY	\$ 53
HOURLY	\$ 17.64

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. CFS-43-07-00012-P, Issue of October 24, 2007. The emergency rule will expire March 29, 2008.

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant. The amount to be paid or allowed for child care assistance funded under the Block Grant and under Title XX shall be the actual cost of care but no more than the applicable rate established in regulations. Payment rates must be sufficient to ensure equal access for eligible children to comparable child care assistance in the substate area that are provided to children whose parents are not eligible to receive assistance under any federal or State programs. Payment rates must take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional cost of providing child care for children with special needs.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access for eligible children. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The current State Plan in effect covers the period October 1, 2005 through September 30, 2007. The proposed State Plan for the period October 1, 2007 through September 30, 2009 has been submitted to the federal government for approval. The market rates that are being replaced were effective October 1, 2005 and were based on a survey conducted in 2005.

2. Legislative objectives:

The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

3. Needs and benefits:

The regulations are needed to adjust existing rates that were established based on a survey conducted in 2005. Since then, child care providers have experienced increased costs in operating their businesses. These costs are reflected in the higher rates that they are charging as compared to the existing rates. The rates need to be updated to reflect the increased rates in order to continue to provide subsidized families with equal access to child care comparable to that received by unsubsidized families as required by federal and State laws.

The methodology used by the Office to establish the payment rates for the regulations meets the federal and State statutory requirements for conducting a local survey of child care providers. Prior to conducting the market rate survey, a letter was mailed to all licensed and registered providers to inform them that they might be among the sample of providers who would be asked to participate in the market rate survey. The Office contracted with a market research firm to conduct the telephone survey in English and Spanish and had resources available to assist providers in other languages. The sample was drawn so that it encompassed the full range of providers within all geographic areas.

The payment rates were established based on over 4,800 completed telephone market rate surveys from licensed and registered providers throughout the State. Providers were asked for the rates they charge for full-time and part-time care, if applicable, based on the age of the child.

These rates were analyzed to determine the 75th percentile. The federal Administration of Children and Families has indicated in the preamble to the final rule for the Child Care and Development Fund that it regards the 75th percentile of the actual cost of care as sufficient to provide subsidized parents with equal access to child care providers. The rates that resulted were then clustered into five distinct groupings of social services districts based on rate similarities. Within each group, rates are differentiated by type of provider (*i.e.*, day care center, school-age child care, family day care, group family day care and legally-exempt family child care and in-home child care), age of child (*i.e.*, under 1 ½, 1 ½-2, 3-5, 6-12), and amount of time in care (*i.e.*, weekly, daily, part-day, and hourly). This data was compiled and analyzed by Suzanne Zafonte Sennett, Director within the Office's Bureau of Early Childhood Services.

The standard market rates for legally-exempt family child care and in-home child care were established based on a 65 percent differential applied to the group market rates established for family day care. The enhanced market rate for legally-exempt family and in-home child care were established based on a 75 percent differential applied to the group market rates established for family day care to reflect an incentive to legally exempt providers to pursue a minimum of 10 hours of approved training. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider.

Revising the existing rates will help subsidized families to avoid losing their child care arrangements or being unable to find appropriate child care. This will help prevent such families from being forced to place their children in child care settings that are inappropriate or unsafe or to leave their children unsupervised. Avoiding such results is important because it can be detrimental to a child's development to experience disruption in care or to receive substandard or no care at all. The updated rates also will help subsidized families avoid having to choose whether to use their limited income to supplement the cost of child care services or to meet their basic living costs.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2007-08, social services districts received their allocations of \$713,220,629 in federal and State funds under the New York State Child Care Block Grant. While this allocation is the primary resource available, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to use for the child care subsidy program.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new

market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The adjustments in rates set forth in the regulations are necessary to implement the federal and State statutory and regulatory mandates.

9. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

10. Compliance schedule:

These provisions must be implemented effective on October 1, 2007.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 70,000 informal providers that may provide child care services to families receiving a child care subsidy.

2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to the new market rates. Payment adjustments will have to be made, as needed.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2007-08, social services districts received their allocations of \$713,220,629 in federal and State funds under the New York State Child Care Block Grant. While this allocation is the primary resource available, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to use for the child care subsidy program.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of over 4,800 licensed and registered child care providers throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care within the counties.

Social services districts will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access comparable to those families not receiving a child care subsidy.

This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of public assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from over 4,800 providers and that information formed the basis for the updated market rates.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

2. Reporting, recordkeeping, and other compliance requirements and professional services:

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the new market rates. Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

3. Costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2007-08, social services districts received their allocations of \$713,220,629 in federal and State funds under the New York State Child Care Block Grant. While this allocation is the primary resource available, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to use for the child care subsidy program.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of over 4,800 completed surveys from licensed and registered child care providers throughout the State. The rates were analyzed to establish market rates at the 75th percentile of the amounts charged. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for rural counties are based on the actual costs of care within the counties.

Social services districts in rural areas will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers in rural areas also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages, if needed. Rate data was collected from over 4,800 providers and that information formed the basis for the updated market rates.

Job Impact Statement

Section 201-a of the State Administrative Procedure Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

These regulations will have a positive impact on jobs or employment opportunities as the increased rates will allow child care providers to hire additional staff or improve the compensation they pay existing staff. Individuals who may have been discouraged from starting up new child care programs in low-income communities because the existing rates would not have been sufficient to support their operational costs may be encouraged by the new rates to establish such programs. In addition, by making child care more available and affordable for low-income working families, the regulations will improve the ability of employers to attract and retain employees and the ability of low-income workers to obtain and maintain jobs.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Notification of Incidents and Access to Records

I.D. No. MRD-03-08-00002-E

Filing No. 1444

Filing date: Dec. 28, 2007

Effective date: Dec. 30, 2007

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

Action taken: Addition of section 624.8 and amendment of sections 624.1, 624.2, 624.3, 624.4, 624.5, 624.6 and 624.20 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 33.23 and 33.25 (L. 2007, chs. 24 and 271)

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

Specific reasons underlying the finding of necessity: The emergency regulations expand upon the provisions of Jonathan's Law to require notification of advocates and correspondents who are not "qualified persons" when incidents occur and allegations of abuse are made. The emergency regulations also expand upon the statutory provisions by extending the requirements from only certified facilities to all programs and services in the OMRDD system.

The additional incident notifications resulting from the new regulatory requirements will create new opportunities for oversight by the individuals

who are notified. Through notification, these individuals are better able to monitor whether the health and safety needs of individuals are properly addressed and whether appropriate steps are being taken to remedy potentially harmful conditions which may have contributed to the incident. Without the promulgation of these regulations on an emergency basis, the additional monitoring enabled by the requirements would not occur until such time as the regulations could be finalized through the regular rulemaking process. During this period of time, potentially harmful situations that might have been remedied through the additional oversight could persist and adversely affect the health, safety and welfare of people receiving services.

Subject: Notification of incidents and access to records.

Purpose: To implement Mental Health Law sections 33.23 and 33.25 (chapters 24 and 271 of the Laws of 2007) concerning incident notifications and records and documents pertaining to allegations and investigations of abuse. The regulations require notification of certain incidents and allegations of abuse and associated follow-up activities. Additionally the rule provides for the release of records and documents pertaining to allegations and investigations of abuse.

Substance of emergency rule: Effective December 30, 2007. Replaces similar emergency regulations that were effective October 1, 2007.

- The following changes were made compared to the October 1, 2007 emergency regulations:
 1. Serious reportable incidents classified as “missing person” are now subject to the Jonathan’s Law notifications.
 2. Service coordinators must be notified of all reportable incidents, serious reportable incidents and allegations of abuse. This has been a longstanding OMRDD policy and is now included in regulation.
 3. Language was clarified related to the time that an alleged abuse case is closed (which starts the 21 day clock for release of documents and records in Section 624.8). The December 30 emergency regulations, paragraph 624.8(e)(2).
 4. The use of a diagnostic procedure (*e.g.*, x-ray) when the results are negative (*e.g.*, nothing broken) is no longer considered a reportable injury.
 5. An old requirement for a “written preliminary finding” within 24 hours of the occurrence or discovery has been eliminated.

General:

- The regulations amend existing OMRDD regulations on incidents and abuse (Part 624).
- The regulations apply to all facilities and services operated, certified, authorized or funded through contract by OMRDD. This includes residential facilities, day programs, HCBS waiver services, and Medicaid Service Coordination.
- New notification and disclosure requirements do not apply to events or situations which are not under the auspices of the agency, such as allegations of abuse by family members in private residences. Requirements that agencies intervene and take appropriate action in these events or situations are unchanged.
- The OMR 147(I) and OMR 147(A) are removed from the regulation. OMRDD is replacing these forms with a single revised form.
- The OMR 147 must be used for all reportable incidents, serious reportable incidents and allegations of abuse.
- Full documentation of compliance is required.
- Existing requirements are unchanged for notification to CQCAPD, law enforcement officials, Statewide Central Register of Child Abuse and Maltreatment, etc.
- For the Willowbrook class, agencies must continue to comply with the incident reporting requirements of the Willowbrook Permanent Injunction.
- An old requirement for a “written preliminary finding” within 24 hours of the occurrence or discovery has been eliminated. The OMR 148 or equivalent report on actions taken takes the place of the written preliminary finding.
- The use of a diagnostic procedure (*e.g.*, x-ray) when the results are negative (nothing broken) is no longer considered a reportable injury.
- Service coordinators must be notified of all reportable incidents, serious reportable incidents and allegations of abuse whether or not the event or situation is “under the auspices” of the agency or sponsoring agency.

Regulations to implement Section 33.23 MHL:

- The regulations build on notification requirements in pre-existing OMRDD regulations, which required notification of serious reportable incidents and allegations of abuse to guardians, parents and advocates/correspondents.
- The following types of events/situations are subject to the new requirements:
 - Reportable incidents in the categories of injury, medication error and death.
 - Serious reportable incidents in the categories of injury, missing person, medication error and death.
 - All allegations of abuse.
- Current notification requirements are maintained for serious reportable incidents which are in the other categories (restraint, possible criminal act, and sensitive situation). Notification must occur within 24 hours of completion of the OMR 147.
- Neither notification nor disclosure is required for reportable incidents in the category of sensitive situation or for events/situations which do not rise to the level of reportable incidents (*e.g.*, “agency reportable incidents”).
- The new requirements require notification to one of the following: guardian, parent, spouse or adult child.
- Exceptions:
 - The guardian, parent, spouse or adult child objects to notification to himself or herself.
 - The person receiving services is a capable adult who objects to the notification being made to someone else.
 - The person who would otherwise be notified is the alleged abuser.
- If there is no guardian, parent, spouse or adult child (or they are unavailable), but the person has an advocate or correspondent, notification should be made to that individual in the same manner. Advocates/correspondents must also be offered a meeting and must be sent the report on actions taken. Upon request, advocates/correspondents must be sent the redacted OMR 147. (Note: the advocate or correspondent is not eligible to request disclosure of the investigation report and other investigation documents).
- If there is no guardian, parent, spouse or adult child (or they are unavailable), and the person receiving services is a “capable adult” as defined in the regulations, the person receiving services must be notified. In addition, the person receiving services must be offered a meeting and must receive the report on actions taken.
- The notification must be by telephone or in person, or by other methods at the request of the recipient of the notice.
- The notification must be made within 24 hours of the completion of the OMR 147.
- The notice must include:
 - A description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any,
 - An offer to meet with the chief executive officer or designee, and
 - For allegations of abuse, an offer to provide information on the status and resolution of the allegation (this is a pre-existing requirement).
- Upon request, a copy of the OMR 147 reporting form must be provided to the person receiving services, guardian, parent, spouse, adult child, or advocate/correspondent. Records must be redacted.
- The agency must provide a written report on actions taken to address the incident or alleged abuse for every incident and allegation subject to the new notification process.
 - The report must be provided to the individual that was notified.
 - The report must include: any immediate steps taken in response to the incident or alleged abuse to safeguard the health or safety of the person receiving services, and a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.
 - The report must be on a form developed by OMRDD or a similar agency form.
 - The report must be provided within 10 days of the completion of the OMR 147.
 - The report on actions taken cannot include names of others involved in the incident/allegation or investigation or information tending to identify them.

Regulations to implement Section 33.25 MHL:

- The regulations require the release of records and documents pertaining to allegations and investigations into abuse under the auspices of the agency.

- Only guardians, parents, spouses and adult children who are considered to be a “qualified person” according to the definition in the Mental Hygiene Law, are eligible to receive records.
- If the otherwise eligible requestor is the alleged abuser he or she is not eligible to receive records.
- If the consumer is a capable adult and objects to the release of records, the otherwise eligible requestor is not eligible to receive records.
- Requests must be in writing.
- Documents and records must be released 21 days after the closure of the alleged abuse case or 21 days after the request, if the request is made after closure. For purposes of determining when the 21 day clock begins, closure is considered the time when the standing committee has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive.
- Records must be redacted.
- A small window of retroactivity established by law (Chapter 271 of the Laws of 2007) allows requests for records related to allegations of abuse which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007. Requests for these records must be made by December 31, 2007.
- Except as noted above, agencies are only required to release records pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007.
- Records may not be redisclosed by recipients.

Redaction (applicable to the release of documents and records pursuant to Section 33.25 MHL and the OMR 147). The following should be redacted:

- Names or other information tending to identify people receiving services and employees. Redaction shall be waived if the employee or person receiving services authorizes disclosure (unless redaction is needed because the information would tend to identify a different person whose identity is shielded by the regulations). The definition of employee is very inclusive, but only for the purposes of redaction of these records in compliance with the new law and the implementing regulations. It includes consultants, contractors, volunteers, family care providers and family care respite/substitute providers, and individuals who live in home of the provider.
- Names or other information tending to identify anyone who made a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 26, 2008.

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

c. Section 33.23 of the Mental Hygiene Law, which requires specific incident notifications and the release of specified reports.

d. Section 33.25 of the Mental Hygiene Law, which requires the release of records and documents pertaining to allegations and investigations of abuse.

2. Legislative Objectives: These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), 33.23 and 33.25 of the Mental Hygiene Law. The promulgation of these amendments will provide a more extensive notification process for certain incidents and allegations of abuse. In addition, the amendments provide greater access by specified individuals to records and documents pertaining to allegations and investigations of abuse.

3. Needs and Benefits: Chapter 24 of the Laws of 2007 (MHL Sections 33.23 and 33.25), otherwise known as “Jonathan’s Law,” was signed by the Governor on May 5, 2007 and was effective immediately. A chapter amendment to the new law, Chapter 271 of the Laws of 2007, was signed on July 18.

The regulatory amendments are necessary to implement the new laws and to make longstanding OMRDD regulations related to incidents and abuse consistent with the statutory requirements. In addition, these amendments clarify ambiguities in the law, as well as provide more specific direction and guidance to providers so that implementation is more effective and consistent statewide. Further, the regulations build on the notification process requirements established by statute to extend certain provisions to advocates and correspondents who are not “qualified persons” and to require compliance by all providers in the OMRDD system, not just “facilities” as specified in the law.

The new law and the associated regulations require providers to implement a more extensive notification process for certain incidents and all allegations of abuse. This notification process will provide timely information about incidents that affect the health or safety of a person receiving services to the following: a person’s guardian, parent, spouse, adult child or advocate/correspondent. In addition to an initial telephone notification, the individual will have access to the initial incident/allegation of abuse report, will be provided a report on initial actions taken and will be offered the opportunity to meet with the agency Chief Executive Officer/DDSO Director (or a designee) to discuss the incident or allegation of abuse.

The law and implementing regulations also provide a qualified person with access to records and documents pertaining to allegations and investigations of abuse. For this purpose a qualified person is defined in Mental Hygiene Law 33.16 and may include: persons receiving services or who formerly received services; and guardians, parents, spouses and adult children of such persons. The regulations extend applicability of the new requirements from only events occurring “at a facility” as specified by statute to allegations of abuse occurring while individuals are receiving facility-based services at a location away from the facility. In addition, the regulations extend applicability to services in the OMRDD system which are not facility-based, such as at-home residential habilitation and supported employment. OMRDD considers that allegations of abuse by employees should be treated the same regardless of the type of service received or location of service delivery.

4. Costs:

a. The amendments impose minor additional costs beyond the cost of complying with the new laws. Compliance with the new laws will likely require additional expenditures for personnel, paperwork, phone charges and postage. Although pre-existing OMRDD regulations already required notification of some types of incidents and allegations of abuse, the law requires notification (with its attendant costs) of additional incidents. In addition, the law requires that a report on actions taken be provided for each incident and allegation of abuse subject to the new notification requirements. Additional meetings may occur as a result of the mandated offer to hold a meeting. Lastly, documents and records must be provided upon request and must be redacted in accordance with the law.

While the statute limited the individuals being notified to “qualified persons,” the regulations extended the new notification process requirements to include advocates and correspondents. While advocates and correspondents were required to be notified of some incidents by the pre-existing OMRDD regulations, minor additional costs will be incurred through both notification of additional incidents and through the additional features of the notification process imposed by Jonathan’s Law, such as the provision of the report on actions taken.

In addition, the statute only applied to allegations of abuse occurring at a facility. However, providers in the OMRDD system operate many services which are not “facilities,” such as service coordination, supported employment, and at-home residential habilitation. The OMRDD regulations extended the requirements of Jonathan’s Law to include all services in the OMRDD system, as well as allegations of abuse when individuals are receiving facility-based services at a location away from the facility. This extension applies to both the notification process and the eligibility to

request records and documents pertaining to allegations and investigations of abuse.

OMRDD is unable to quantify the modest additional costs that will be incurred by these extensions of the statutory requirements.

b. OMRDD will incur additional costs as a provider of state-operated services as noted above. These additional costs cannot be quantified.

OMRDD will use existing staff to administer this rule and does not anticipate any significant expenditure related to its administration. There are minimal additional expenditures related to informing and training providers of both Jonathan's Law and the implementing regulations.

c. There will be no additional costs to local governments.

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

6. Paperwork: Compliance with the new laws entails an increase in paperwork. The new law requires that a written report on actions taken be provided for every incident that is subject to the new requirements. OMRDD has developed a new form to assist agencies in providing this report. Agencies are also required to provide redacted incident reports upon request as a part of the notification process. Further, agencies are required to provide redacted records and documents pertaining to allegations and investigations into abuse. The regulations add minimal new paperwork requirements to the statutory requirements by extending provisions related to the notification process to include advocates and correspondents, and extending requirements to encompass all services in the OMRDD system and incidents related to facility-based programs which occur in community settings with staff.

7. Duplication: The regulatory amendment does not duplicate existing state or federal requirements.

8. Alternatives: The law only requires the notification requirements to be made to a qualified person as defined in MHL 33.16. "Qualified persons" include only guardians, parents, spouse or adult child. OMRDD had considered limiting the applicability of the notification requirements to "qualified persons." However, OMRDD recognizes the valuable role played by siblings, family members, friends and others who are advocates and correspondents but who are not "qualified persons." OMRDD considers that individuals without a "qualified person" who have an advocate or correspondent should also be able to benefit from the additional notification process requirements. OMRDD consequently extended the new notification process requirements to include advocates/correspondents.

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

10. Compliance Schedule: OMRDD filed a similar emergency regulations on October 1, 2007.

OMRDD intends propose similar regulations in the future and to finalize regulations within the time frames provided for by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Effect on small business: These regulatory amendments will apply to providers of services that operate all programs certified, authorized or approved by OMRDD.

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

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: The new law required a variety of compliance activities. These activities include: providing telephone notice to a qualified person for certain incidents and allegations of abuse, offering a meeting with the agency's Chief Executive Officer or DDSO Director or a designee, and offering to provide a written report on actions taken. In addition, upon the request of a qualified person, documents and records pertaining to allegations and investigations of abuse must be released. All the above referenced documents must have names and identifying information redacted. The implementing regulations extend the requirements to advocates and correspondents, to non-facility based services and to situations when facility-based services are delivered at a location away from the facility. Agencies will need to make the changes needed for implementation in these situations where the regulatory requirements exceed the statutory requirements.

3. Professional services: Modest additional professional services are required as a result of these amendments, due to the need for the involvement of legal professionals in redaction and interpretation of the regulations, to the extent that the regulatory requirements exceed the statutory requirements. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no costs to local governments.

The amendments impose minor new compliance costs. There are minimal additional costs associated with implementation and compliance with the law. In the areas noted above where the regulatory requirements exceed the statutory requirements, these modest compliance costs will be increased as notification is required in new situations and in additional service types.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: As stated in the Regulatory Impact Statement, the proposed regulation will have no fiscal effect on State or local governments, and minimal fiscal impact on regulated parties (including the state as a provider). Modest additional costs are necessary to the extent regulatory requirements exceed statutory requirements. OMRDD has reviewed and considered the approaches for minimizing economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. In order to minimize adverse economic impact, OMRDD has developed a standardized form for the report on actions taken. The use of this form will minimize staff resources devoted to completing the form, instead of each agency developing its own form or not using a form for this purpose.

7. Small business and local government participation: OMRDD convened a Jonathan's Law implementation workgroup which included representatives from provider associations. The group met on June 1, June 20 and November 7, 2007. Presentations were made to various groups including committees of the Cerebral Palsy Associations of New York State and the New York State Association of Residential and Community Agencies (NYSACRA). OMRDD staff presented at training sessions with hundreds of provider representatives hosted by NYSACRA on June 28 and July 20. OMRDD staff also presented at a training session hosted by the Long Island Alliance on August 23. In addition, OMRDD staff made a presentation at a meeting of the Conference of Local Mental Hygiene Directors on August 17. OMRDD also conducted a series of internal training sessions on October 3, October 11, October 18 and October 29. Informational mailings were sent to affected providers regarding the implementation of the new law on May 11 and May 15. A detailed informational mailing specifically discussing the emergency regulations was sent to providers and other interested parties on August 31. OMRDD also solicited comments from the Self-Advocacy Association, the Statewide Family Support Services Committee and the NYSARC Adult Services Committee. OMRDD informed all provider agencies, provider associations, and other interested parties (including parents, family members and individuals receiving services) of the October 1 emergency regulations by mail. In addition, numerous questions and comments were received from voluntary providers, local government representatives and others at the events noted above and through individual contact.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, recordkeeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). This finding is based on the fact that the proposed rule changes the way in which notifications are made regarding certain incidents and allegations of abuse. The proposed rule also provides greater access by qualified persons, including parents and legal guardians, to records and documents pertaining to allegations and investigations of abuse and mistreatment. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Job Impact Statement

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and/or employment opportunities and they may have a slightly positive impact on employment opportunities due to new features in the rule. This finding is based on the fact that the

regulatory requirements exceed the statutory requirements of Jonathan's Law to require modest additional notifications and access to records as noted in the Regulatory Impact Statement. It is anticipated that providers will generally utilize existing staff to accomplish these tasks. In unusual circumstances, providers may find it necessary to hire or contract for additional staff.

Department of Motor Vehicles

NOTICE OF ADOPTION

Ignition Interlock Devices

I.D. No. MTV-45-07-00001-A

Filing No. 1443

Filing date: Dec. 28, 2007

Effective date: Jan. 16, 2008

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

Action taken: Amendment of Part 140 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 1198(3)

Subject: Ignition interlock devices.

Purpose: To define terms for issuance of a post-revocation conditional license.

Text of final rule: Subdivision (a) of section 140.1 is amended to read as follows:

(a) Intent. Section 1198 of the Vehicle and Traffic Law establishes an ignition interlock program [in Albany, Erie, Nassau, Onondaga, Monroe, Westchester and Suffolk Counties], [. This program] *which* authorizes courts in [these] *all* counties of the State to require persons convicted of driving while intoxicated to equip their vehicles with an ignition interlock device. This Part establishes guidelines for the implementation of this program.

Paragraph (2) of subdivision (b) of section 140.1 is amended to read as follows:

(2) Program. As hereinafter used in this Part, the term program shall refer to the ignition interlock device program [located in Albany, Erie, Nassau, Onondaga, Monroe, Westchester and Suffolk Counties].

Section 140.2 is amended to read as follows:

§ 140.2 Participants in the program. The court may require that any person who has been convicted of a violation of subdivision two, *two-a* or three of section 1192 of the Vehicle and Traffic Law [.] *may participate in the program and may be eligible for a post-revocation conditional license as provided for in section 140.4. In addition, a court may require a defendant who is convicted of [or] any crime defined by such law or the Penal Law of which an alcohol-related violation of any provision of section 1192 of this chapter is an essential element, and has been sentenced to a period of probation, to install and maintain as a condition of probation, a functioning ignition interlock device. Such defendants, however, shall not be eligible for the post-revocation conditional license.*

Paragraph (1) of subdivision (a) of section 140.4 is amended to read as follows:

(1) such person has been convicted of a violation of subdivision 2, 2-a or 3 of section 1192 of the Vehicle and Traffic Law;

Paragraphs (5), (7) and (8) of subdivision (c) of section 140.4 are amended to read as follows:

(5) The person has been penalized under section 1193(1)(d)(1) of the Vehicle and Traffic Law for any violation of subdivision 2, 2-a, 3, [or] 4 or 4-a of such section.

(7) The person has other open suspension or revocation orders on their record, other than for a violation of section 1192(1), (2), 2-a, (3), [or] (4) or 4-a of the Vehicle and Traffic Law.

(8) The person has two convictions of a violation of section 1192 3, 4 or 4-a of the Vehicle and Traffic Law where physical injury has resulted in both instances.

Subdivision (c) of section 140.5 is amended read as follows:

(c) Employer vehicles. The holder of a post-revocation conditional license, who is required to operate a motor vehicle owned by said person's employer in the course and scope of his employment, may operate that vehicle *only in the course and scope of such employment* without installation of an approved ignition interlock device if the employer has been notified that the person's driving privilege has been restricted pursuant to section 1198 of the Vehicle and Traffic Law and the person subject to such restriction has [acknowledgment of] *provided the court and probation department with written documentation indicating the [employer's notification in his or her possession while operating] employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vehicle without the device only for normal business [duties] purposes.* The holder of the post-revocation conditional license must notify the court and the probation officer of his or her intention to operate the employer's vehicle. A motor vehicle owned by a business entity which is all or partly controlled by a person subject to the provisions of section 1198 of the Vehicle and Traffic Law is not a vehicle for the purposes of this exemption.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 140.5(c).

Text of rule and any required statements and analyses may be obtained from: Carrie L. Stone, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: carrie.stone@dmv.state.ny.us

Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Reliability Rules

I.D. No. PSC-27-07-00009-A

Filing date: Dec. 27, 2007

Effective date: Dec. 27, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted the April 13, 2007 modifications to the Reliability Rules of the New York State Reliability Council, Version 19.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1) and (2)

Subject: Modifications to Reliability Rules of the New York State Reliability Council.

Purpose: To adopt the modifications to Reliability Rules of the New York State Reliability Council.

Substance of final rule: The Commission adopted the April 13, 2007 modifications to the Reliability Rules of the New York State Reliability Council, Version 19, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1180SA6)

NOTICE OF ADOPTION

Gas Rates and Service by Corning Natural Gas Corporation

I.D. No. PSC-43-07-00021-A

Filing date: Dec. 27, 2007

Effective date: Dec. 27, 2007

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

Action taken: The commission, on Dec. 12, 2007, approved Corning Natural Gas Corporation's (Corning) request to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service, P.S.C. No. 3 and P.S.C. No. 4.

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

Subject: Gas rates and service.

Purpose: To approve Corning's request to increase annual gas revenues by \$681,000 or 2.5 percent.

Substance of final rule: The Public Service Commission approved Corning Natural Gas Corporation's request for an increase in annual gas revenues by \$681,000 or 2.5%, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-G-0772SA1)

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

Submetering of Electricity by 343 LLC

I.D. No. PSC-03-08-00004-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 grant, deny or modify, in whole or in part, the petition filed by 343 LLC to submeter electricity at 353 Fourth Ave., Brooklyn, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To submeter electricity at 353 Fourth Ave., Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 343 LLC to submeter electricity at 353 Fourth Avenue, Brooklyn, New York.

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

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

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

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

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

(07-E-0955SA2)

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

Joint Proposal Regarding the Provisions of Water Service by United Water New Rochelle, Inc., et al.

I.D. No. PSC-03-08-00005-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 adopt, adopt with changes, or reject the terms of a joint proposal filed by United Water New Rochelle, Inc; New Rock Parcel 1A, LLC; and New Rochelle Revitalization, LLC (parties) requesting approval of the agreement regarding the provision of water service.

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

Subject: Joint proposal regarding the provision of water service.

Purpose: To consider the joint proposal executed by the parties on Dec. 19, 2007 regarding the provision of water service.

Substance of proposed rule: On June 29, 2007, United Water New Rochelle Inc. (company or UWNR) filed a petition for a Declaratory Ruling that Cappelli Enterprises, Inc. (Cappelli) must pay the costs of the off-site upgrades required to provide water service to its Trump Plaza Project in the City of New Rochelle, New York; or, in the alternative, for permission to recover the costs of those upgrades through its Long Term Main Replacement Program. On July 18, 2007, Cappelli (managing agent), on behalf of New Roc Parcel 1A, LLC (New Roc) the actual owner of the Trump Plaza Project, filed an Opposition to UWNR's petition for a Declaratory Ruling. The above parties entered into negotiations and during settlement discussions the parties expanded their discussions to include the facilities required to provide water to the LeCount Square Project proposed by New Rochelle Revitalization, LLC (NRR). As a result of negotiations among the parties, a Joint Proposal (JP) was executed on December 19, 2007.

UWNR provides metered rate water service to approximately 31,130 residential customers located in the Town of New Rochelle, Westchester County. The Commission may adopt the terms of the Joint Proposal related to the provision of water service, adopt the terms with changes, or reject the terms and adopt others.

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-W-0774SA1)

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

Rehearing of the Accounting Determinations by New York State Electric & Gas Corporation

I.D. No. PSC-03-08-00006-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 grant or deny, in whole or in part, New York State Electric & Gas Corporation's (NYSEG) petition for rehearing of the accounting determinations contained in an order in Case 07-M-0174, issued Oct. 18, 2007 related to a transfer of a building and land located in the Town of South-east, Putnam County, NY.

Statutory authority: Public Service Law, sections 4, 5, 22, 66(1), (4) and 70

Subject: Rehearing of the accounting determinations contained in an order in Case 07-M-0174, issued Oct. 18, 2007.

Purpose: To grant or deny, in whole or in part, a petition for rehearing of the accounting determinations.

Substance of proposed rule: The Public Service Commission is considering whether to grant or deny, in whole or in part, New York State Electric & Gas Corporation's petition for rehearing of the accounting determinations contained in the Commissioner's Order in Case 07-M-0174, issued October 18, 2007 related to a transfer of a building and land located in the Town of Southeast, Putnam County, New York.

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

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

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

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

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

(07-M-0174SA2)

corporations within New York State that offer internet and telephone account wagering.

Substance of emergency rule: Include the following:

5300.1(b) is revised to add the word "natural" to read "Account holder shall mean a *natural* person authorized by an authorized pari-mutuel wagering entity to place wagers via account wagering."

5300.1(e) is revised to strike the word "telephonic" and add the word "account" to read "Account wagering center shall mean the facility or facilities which have the capability of accepting [telephonic] *account* wagers..."

5300.1(m) is revised to delete the work "written" before the word "record" to read "Report shall mean a summary of wagering activity or other [written] record prepared pursuant to this sub-chapter."

5300.4(a)(2) is revised to remove language regarding specifics on how an account may be opened and language is added regarding a plan of operation, to read "Accounts may be opened [in person with cash or check, or by mail with check] *in accordance with procedures set forth in a plan of operation approved by the board.*"

5300.4(a)(5) is revised to add the following language at the end of the paragraph: "A copy of a social security card is not required to be maintained at the time of the application if the number is verified with a credit reporting agency and such report is maintained with the account application."

5300.4(b)(1)(i), which addresses bearer accounts, is revised to read as follows: "The account can only be used in person through a teller or self service machine *at a duly approved location* and,"

5300.4(b)(1)(ii), which addresses bearer accounts, is revised to read as follows: "The account [is only used in the location or branch at which it was opened] *can not be used for internet and telephone wagering.*"

5300.4(b)(5)(iv), which addresses bearer accounts, is revised to read as follows: "accounts shall only be closed [in person for the person bearing the card issued in (b)] *by the account holder by presenting the card issued and after verification of the PIN or pursuant to other applicable provisions of the law.*"

5300.7(b) is revised to create new subparagraphs (i) through (iv) to prohibit accounts to reputed bookmakers, any person who engages in any activity which is deemed to be a gambling offense as defined in Article 225 of the Penal Law of the State of New York, and a known fugitive from justice.

5300.8 is revised to add the word "bank" as follows: "The authorized pari-mutuel wagering entity shall, upon receipt of money from account holders and related winning wagers, deposit such money within 72 hours in a segregated *bank* account, kept and maintained by the authorized pari-mutuel wagering entity until appropriately distributed."

5300.9(c)(2) is revised to remove the word "verify" and add the word "confirm" as follows: "[Verify] *confirm* all account wagering transactions before acceptance of an account wager."

5300.11(a) is revised to add language as follows: "Excepting bearer accounts, withdrawals may be made [in person or by mail] by completing a request for withdrawal *in accordance with procedures set forth in a plan of operation approved by the board.*"

5300.11(b) is revised to read as follows: "Fund transfers may be made via [electronic] *alternate* means pursuant to an approved plan of operation."

5300.12(c) is revised to add language as follows: Funds from winning wagers shall be credited to the account immediately after a race is declared official. However, funds from winning wagers subject to Internal Revenue Service reporting requirements shall be held and not available for use until [such time the account holder completed all necessary paperwork] *compliance with applicable Internal Revenue Service reporting requirements.*

5300.13(a) is revised to read as follows: "The authorized pari-mutuel wagering entity shall no less than once per calendar month [provider] *make available* a statement to each account holder detailing the month's beginning and ending balances and each debit and credit."

5300.19(c) is omitted, which previously read "Vouchers are not permissible in account wagering pursuant to this subchapter."

I respectfully request approval of this emergency rulemaking.

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. RWB-33-07-00005-P, Issue of August 15, 2007. The emergency rule will expire February 23, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wa-

Racing and Wagering Board

EMERGENCY RULE MAKING

Internet and Telephone Wagering on Horseracing

I.D. No. RWB-33-07-00005-E

Filing No. 1408

Filing date: Dec. 26, 2007

Effective date: Dec. 26, 2007

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

Action taken: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 222, 301, 401, 518, 520, 1002 and 1012

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

Specific reasons underlying the finding of necessity: These amendments are necessary to detect and deter unlawful financial activity in off-track betting over the internet and telephone. These amendments give regulatory force and effect to the statutory amendments that permit the use of the Internet in account wagering which went into effect on January 22, 2007, and are contained in Chapter 314 of the Laws of 2006 as codified in Section 1012 of the RPWBL. Specifically, the amendments are necessary to provide guidelines and safeguards that allow for the use of state-of-the-art communication equipment in account wagering while preserving the integrity of pari-mutuel wagering in New York State, thereby ensuring substantial revenue for state and local governments and strengthening and furthering the racing, breeding and pari-mutuel wagering industry in New York State. The 2002 Breeders' Cup Ultra Pick 6 scandal, which involved the use of telephone account wagering in the fraudulent placing of bets and threatened to undermine public confidence in off-track betting, demonstrated the need for heightened scrutiny of account wagering. These rules are designed to detect and deter such unlawful activity which potentially threatens government revenue derived from off-track betting.

Subject: Internet and telephone account wagering on horseracing.

Purpose: To ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for internet and telephone account wagering. This rule would establish reporting, recordkeeping, operational and application requirements for race track operators and off-track betting

gery Board, One Broadway Center, Ste. 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

(a) **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 104, 222, 301, 401, 518, 520, 1002 and 1012. Subdivision 1 of section 101 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) vests the Racing and Wagering Board (the Board) with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 222 authorizes the conduct of pari-mutuel betting on horse races for the purpose of deriving a reasonable revenue for the support of government and to promote agriculture and breeding of horses in New York State. Subdivision 1 of section 301 grants the Board the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Subdivision 1 of section 401 grants the Board the power to supervise generally all quarterhorse race meetings in the state at which pari-mutuel betting is conducted. Section 518 authorizes off-track pari-mutuel betting so long as it is conducted under the administration of the Board. Subdivision 1 of section 520 grants general jurisdiction to the Board over the operation of all off-track pari-mutuel betting facilities within the state, and directs the Board to issue rules and regulations regarding off-track pari-mutuel betting activity. Subdivision 1 of section 1002 grants the Board general jurisdiction and rulemaking power over the simulcasting of horse races within the state. Subdivision 4 of section 1012 requires that the maintenance and operation of telephone accounts for wagers placed on licensed pari-mutuel racing shall be subject to rules and regulations of the New York State Racing and Wagering Board. Subdivision 4-a of section 1012 was added by Chapter 314 of the Laws of 2006 to expand authorized telephone account wagering to include wired or wireless communications, including the internet.

(b) **LEGISLATIVE OBJECTIVES:** These amendments give regulatory force and effect to the statutory amendments contained in Chapter 314 of the Laws of 2006 as codified in Section 1012 of the RPWBL. Specifically, the amendments provide the necessary definitions, guidelines and safeguards that allow for the use of state-of-the-art communication equipment in account wagering while preserving the integrity of pari-mutuel wagering in New York State, thereby ensuring substantial revenue for state and local governments and strengthening and furthering the racing, breeding and pari-mutuel wagering industry in New York State.

(c) **NEEDS AND BENEFITS:** The New York State and the Racing and Wagering Board needs to ensure that the hundreds of millions of dollars that may potentially be wagered by telephone and the Internet in any given year can be accounted for using uniform and reliable methods. These regulatory amendments are necessary to implement the statutory provisions of Chapter 314 of the Laws of 2006, which becomes effective January 22, 2007 and amends Section 1012 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) by expanding the authorized method of placing account wagers to include "all those wagers which utilize any wired or wireless communication device, including but not limited to wireline telephones, wireless telephones, wireless telephones, and the internet." This rule is necessary to ensure the integrity of Internet and telephone account wagering in New York State. While Chapter 314 authorized in general terms the use of certain electronic devices in pari-mutuel wagering activities, this rule establishes the specific guidelines necessary for practical implementation of the statutory amendments. Telephone account wagering has been available in New York State for approximately 30 years, but there have been no comprehensive Board rules for account wagering. This will establish such rules. The New York State Legislature has recognized the potential of Internet account wagering in bolstering New York horse racing, and these rules will ensure that the use of the Internet in pari-mutuel wagering will be conducted in an open and honest manner.

(d) **COSTS:**

(i) The costs for the implementation of, and continuing compliance with, the rule to regulated persons will be negligible. Racetrack operators and off-track betting corporations already make telephone account wagering available and can comply with this rule by using existing accounting equipment and personnel. Such entities also have their own web sites and web server networks.

(ii) There would be no new costs for the implementation of, and continued administration of, the rule to the New York State Racing and Wagering Board, and the state and local governments. The Board and the Department of Taxation and Finance currently monitor telephone account wagering, and can continue to use current resources to administer this rule. The addition of internet wagering as a method of account wagering will not impose any new costs given the inherent accountability qualities of Internet servers and software systems. There would be no new costs to local governments because they do not regulate pari-mutuel wagering.

(iii) The information regarding costs was determined by Board staff. It made this determination based upon practical knowledge of the existing telephone account wagering systems, which it currently supervises pursuant to its general powers under the RPWBL.

(e) **PAPERWORK:** This rule does not impose any specific form requirement, but does include reporting requirements.

Authorized pari-mutuel wagering entities will be required to maintain for three years documentation of all persons excluded from opening an internet wagering account. Entities will also be required to maintain documentation of customer disputes and complaints for three years. All such documents must be made available to the Racing and Wagering Board upon request.

Authorized pari-mutuel wagering entities will be required to submit a written plan of operations for approval by the Racing and Wagering Board.

Authorized pari-mutuel wagering entities will be required to furnish monthly account statements to their customers.

Authorized pari-mutuel entities will be required submit annual reports detailing handle information and account activity from the previous calendar year. Entities will also be required to conduct annual audits of the account wagering system data input and account updates.

(f) **LOCAL GOVERNMENT MANDATES:** There are no local government mandates. Pari-mutuel wagering activities in New York State are exclusively regulated by the New York State Racing and Wagering Board.

(g) **DUPLICATION:** Because the New York State Racing and Wagering Board has exclusive regulatory authority over pari-mutuel wagering activity, there are no other state or federal rules that duplicate, overlap or conflict with this rule. This rule is intended to give force and effect to Chapter 314 of the Laws of 2006. This rule is consistent with the provisions of the federal Unlawful Internet Gambling Enforcement Act of 2006, which amends Chapter 53 of Title 31, United States Code.

(h) **ALTERNATIVE APPROACHES:** Several alternatives were considered. Board staff considered the Advance Deposit Wagering Rules of the Association of Racing Commissioners International and the telephone account wagering practices currently used in New York State. Board staff also reviewed and considered the account wagering rules of other jurisdictions, including Maryland, Louisiana, Massachusetts, Idaho, South Dakota, Washington, California and New Jersey. All of these similar rules and practices are relatively uniform.

In drafting this rule, the Board solicited and considered public comment from all entities engaged in pari-mutuel wagering in the State of New York, including thoroughbred and harness track operators, off-track betting corporations, and pari-mutuel wagering totalizator companies. There was general support for the Board's approach to accountability and reporting. The Board did revise certain aspects of the rule based upon public comments, but ultimately retained the overall regulatory approach as originally proposed.

Board staff considered the need for general age proof requirements in the rule and determined that none were necessary. Paragraph 1 of subdivision (a) of section 5300.4 requires that an account holder "shall be a natural person eighteen (18) years of age or older." This requirement is consistent with section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, which states that "No association or corporation which is licensed or franchised by the board shall permit any person who is actually and apparently under eighteen years of age to bet on a horse race conducted by it nor shall such person be permitted to bet at an establishment of a regional corporation conducting off-track betting." The association, corporation or off-track regional corporation is responsible for ensuring that no person – including persons who hold bearer accounts or wish to wager under a bearer account – is under the age of eighteen if they wish to place a bet. Section 5300(a)(1) simply reiterates the section 104 restriction so as to provide clear language and guidance to regulated parties. No additional rules were included in regard to general age proof requirements because Board staff has determined that Section 104 is self-executing and does not require additional rules in order to effectively enforce its provisions. The

Board expects licensees to apply the same age proof requirements for section 5300.4(a)(1) as it does for section 104 of RPWBL.

(i) **FEDERAL STANDARDS:** There are no federal standards which specifically govern these pari-mutuel wagering activities. The Unlawful Internet Gambling Act of 2006 states that "unlawful Internet gambling" shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*).

(j) **COMPLIANCE SCHEDULE:** This emergency rule is effective as of the date of submission to the Department of State (December 26, 2007.)

Regulatory Flexibility Statement, Rural Area Flexibility and Job Impact Statement

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment addresses the limited issue of operational and administrative aspects of Internet and telephone account wagering. This rule would affect race track operators and off-track betting corporations throughout New York State, all of who currently offer telephone account wagering. This rule is consistent with current practices employed by such entities, as well as certain disclosure and operational plan requirements of the Racing and Wagering Board. This rule is intended to modify the Board's rules to properly regulate the expansion of pari-mutuel wagering into the realm of the Internet and telephone wagering as authorized by the Legislature in 2006. It does not limit job opportunities. In fact, the increased revenue from pari-mutuel wagering over the Internet may help preserve and expand economic opportunities in the New York State horse racing industry by capturing revenue that is wagered over the Internet on horseracing in other states and countries. Establishing Internet and telephone account wagering standards does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102 (8) because race track operators and off-track betting corporations are not small businesses. Nor does this rule affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry because the race track operators and off-track betting corporations are able to use the current telephone account wagering and Internet server technology that they currently possess.

NOTICE OF ADOPTION

Disqualification of a Horse for Intentional or Careless Interference

I.D. No. RWB-43-07-00011-A

Filing No. 1445

Filing date: Dec. 31, 2007

Effective date: Jan. 16, 2008

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

Action taken: Amendment of section 4035.2(d) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 207 and 212

Subject: Disqualification of a horse for intentional or careless interference.

Purpose: To prohibit intentional or careless interference by a horse during the course of a race.

Text or summary was published in the notice of proposed rule making, I.D. No. RWB-43-07-00011-P, Issue of October 24, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

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

Payment of Moving and Related Expenses to Displaced Persons

I.D. No. TRN-03-08-00003-P

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

Proposed action: Repeal of Part 101 and addition of a new Part 101 to Title 17 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. TRN-26-06-00004-P.

Statutory authority: Highway Law, sections 29, 30, 85 and 347; Transportation Law, sections 14(18) and 228; and Canal Law, section 40

Subject: Payment of moving and related expenses to displaced persons vacating property acquired by the Commissioner of Transportation by eminent domain.

Purpose: To clarify and conform State regulations to Federal regulations with respect to payment of relocation assistance benefits to displaced persons for consistency in application of moving expense allowances.

Text of proposed rule: Part 101 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed and a new Part 101 is added to read as follows:

PART 101

PAYMENTS TO AN OWNER OR TENANT OF RESIDENTIAL PROPERTY OR COMMERCIAL PROPERTY UPON THEIR APPLICATION FOR ALLOWANCE OF MOVING EXPENSES IN VACATING PROPERTY ACQUIRED BY THE COMMISSIONER OF TRANSPORTATION, FOR SUPPLEMENTAL RELOCATION PAYMENTS, FOR INCREASED INTEREST COSTS AND FOR CLOSING COSTS

Section 101.1 Purpose.

The purpose of this part is to promulgate rules in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for either State, Federal or federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in State, Federal, and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of either State, Federal, or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that State and Federal Agencies implement these regulations in a manner that is efficient and cost effective.

(d) To ensure fair housing, open to all persons regardless of race, color, sex, age, religion, national origin or disability.

Section 101.2 General.

The Commissioner of Transportation adopts Sections 24.1 through 24.9 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length.

Section 101.3 Appeals.

(a) The provisions included in this section shall apply to all displaced persons who express dissatisfaction with the determination of the New York State Department of Transportation ("the Department") of eligibility or reimbursement for moving expenses, replacement housing payments or other incidental and/or litigation costs connected with the property owner's conveyance of title of the acquired property to the State. At the request of the displaced person, the Department shall permit the person to inspect and copy all material pertinent to that person's appeal, except that materials which are classified as confidential, shall be subject to such reasonable conditions as the Department may impose.

(b) If the displaced person is not satisfied with the Department's determination, the person may, within 18 months of vacating or six months after final award, request an informal conference to contest the determination. Upon request, such a conference shall be scheduled in the Department's regional office and conducted by the Department's Regional Real Estate Supervisor. The displaced person may have representation at such conference. After all relevant information has been analyzed, the Depart-

ment's Regional Real Estate Supervisor shall promptly notify the displaced person of the decision in writing. The written notice shall include an adequate explanation of the claim and describe how the decision is supported.

(c) In the event the displaced person is not satisfied with the results achieved at the Department's regional level, an appeal to the Director of the Department's Main Office Real Estate (the "Director") may be taken within 60 days of the written notice referred to in subdivision (b) above. The Director shall then make an independent determination according to the data submitted by the displaced person and the Department's Regional Real Estate Supervisor. The determination of the Director shall be made in writing to the displaced person, or representative, and shall include an explanation of how it is supported.

(d) In the event the displaced person is not satisfied with the results achieved at the level of the Director, a written request for a formal hearing must be made to said Director within 60 days of receiving the Director's decision. A formal hearing will be conducted by a hearing officer designated by the Commissioner of the Department (the "Commissioner" or the "Commissioner of Transportation"), to be held at a time and place to be determined by the hearing officer. Minutes of the proceedings shall be taken. Based upon all of the evidence produced at the hearing, the hearing officer shall make a recommendation to the Commissioner who shall then make a final determination regarding the claim. If the matter is still contested, the displaced person may then seek appropriate judicial review.

(e) In addition to the provisions of this Section, the Commissioner of Transportation adopts Section 24.10 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length.

Section 101.4 General Relocation Requirements.

The Commissioner of Transportation adopts Sections 24.201 through 24.209 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length.

Section 101.5 Payments for Moving and Related Expenses.

(a) The Commissioner of Transportation adopts Sections 24.301 and 24.303 through 24.306 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length.

(b) The Commissioner of Transportation adopts Section 24.302 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length with the following additional provision that the Department may pay such other amounts consistent with Federal reimbursement rates if the Commissioner determines such amounts to be appropriate for use by the Department.

Section 101.6 Replacement Housing Payments.

The Commissioner of Transportation adopts Sections 24.401 through 24.404 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length.

Section 101.7 Mobile Homes.

The Commissioner of Transportation adopts Sections 24.501 through 24.503 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length.

Section 101.8 Certification.

The Commissioner of Transportation adopts Sections 24.601 through 24.603 and Appendices A and B of Part 24 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length.

Section 101.9 Hardship Cases.

(a) Notwithstanding any other provisions contained in this Part, in hardship cases, the Commissioner may make advance payments in anticipation of a displaced person's actually moving or actually purchasing or renting and occupying decent, safe and sanitary replacement housing. The Commissioner may authorize the advance payment of the amount determined to represent reasonable and necessary moving expenses or the amount of the approved replacement housing payment deemed necessary to purchase or rent decent, safe and sanitary replacement housing. In the case of a replacement housing payment, payment shall be made only if there is a signed contract for the purchase of a replacement housing property or, in the case of a replacement rental unit, if there is a signed lease or some other firm commitment. In both instances, the proposed replacement housing shall be inspected prior to payment to determine whether it is decent, safe and sanitary.

(b) When the Commissioner determines that an unusual or hardship situation exists and it is determined to be in the public interest to do so, the Commissioner may authorize relocation payments even though the strict requirements of eligibility and reimbursement specified in this Part are not met.

Section 101.10 Incorporation by Reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled Code of Federal Regulations, Title 49, Part 24, revised as of October 1, 2005, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, 41 State Street, Albany, NY 12231, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Main Office Real Estate, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

Text of proposed rule and any required statements and analyses may be obtained from: Anne E. Flowers, Director, Acquisitions Management Bureau, Department of Transportation, POD 41, 50 Wolf Rd., Albany, NY 12232, (518) 457-9642, e-mail: AFlowers@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 Withdrawal Objection

This comment was basically that the proposed consensus rule making would effectively repeal the current language of § 101.2(c)(9) that requires a "comparable replacement dwelling" to be "fair housing, open to all persons regardless of race, color, religion, sex or national origin."

The consensus rule making text language was amended to address this objection in this current standard rulemaking submission.

Regulatory Impact Statement

1. Statutory Authority: Subdivision 10 of Section 30 of the Highway Law authorizes the Commissioner of Transportation to establish, and from time to time amend, rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property who must be relocated as a result of the acquisition of such property by eminent domain by the Department of Transportation for a highway project. Subdivision 12 of Section 30 of the Highway Law authorizes the Commissioner of Transportation to establish, and from time to time amend, rules and regulations providing for supplemental relocation payments or replacement housing. Section 85 of the Highway Law authorizes, empowers and directs the Commissioner of Transportation to perform such acts as are necessary to comply with federal-aid highway and transportation acts and the rules and regulations promulgated by the federal government thereunder.

Subdivision 18 of Section 14 of the Transportation Law authorizes the Commissioner of Transportation to make and prescribe rules and regulations in relation to the discharge of the Commissioner's functions, powers and duties and those of the Department of Transportation.

2. Legislative Objectives: The proposed amendment adds the requirement that the number of occupants occupying habitable rooms for sleeping purposes is not to exceed the number permitted by local housing codes; provides that advisory assistance may be provided to unlawful occupants not displaced; revises utility costs to include electricity, gas and other heating and cooking fuels; adds the definition of "mobile home", increases maximum reimbursement for searching fees; adds refundable security and utility deposits to the list of ineligible moving and related expenses; adds professional home inspection, certification of structural soundness, and termite inspection as eligible incidental expenses; and otherwise clarifies and conforms State regulations to federal regulations relating to relocation assistance as a result of the acquisition of property by eminent domain by the Department of Transportation for a highway project. Conforms such provisions with the Code of Federal Regulations.

3. Needs and Benefits: The Federal Highway Administration revised Part 24 of Title 49 Code of Federal Regulations. We are making changes to Section 101 of Title 17 to conform State Regulations by incorporating by reference various provisions of Federal regulations to facilitate uniformity with respect to the payment of relocation assistance benefits to displaced persons.

4. Costs:

(a) Cost to State Government: There should be no increased costs associated with the ceilings being eliminated on certain categories of re-establishment expenses because the total for the re-establishment expenses is still limited to \$10,000 and most displacees' re-establishment expenses exceed that amount. Accordingly the Department usually pays the maxi-

mum amount for re-establishment expenses and this will continue to be the maximum under the revised rule.

(b) Cost to Local Governments: None.

(c) Cost to Private Parties: None. Only benefits are provided by the proposed amendments, however, there may be instances where certain displaced persons are made ineligible for such benefits.

(d) Cost to Department of Transportation: These costs are the same as those set forth in paragraph (a) above.

5. Paperwork: No additional paperwork is required to implement these amendments. Existing payment application forms will be modified to include a statement of residency.

6. Local Government Mandates: None.

7. Duplication: The regulation incorporates by reference the federal regulations on the same subject; and its purpose is to bring State regulations into conformance with federal regulations.

8. Alternatives: No other alternatives were considered in that the purpose of the proposal is to bring relocation benefits provided to displacees of Department highway projects into uniformity with those benefits mandated by federal regulations.

9. Federal Standards: Does not exceed federal regulations.

10. Compliance Schedule: Achievable immediately upon adoption of rule.

Regulatory Flexibility Analysis

Although substantive changes were made to the proposed rule, a regulatory flexibility analysis is not necessary because the changes do not impose an adverse economic impact on small business or local governments nor do they impose reporting, recordkeeping or other compliance requirements on small business or local governments.

The rule merely reflects amendments to Federal regulations pursuant to which displacees to be relocated as a result of a Department of Transportation highway project are provided moving and relocation benefits. Any reporting, recordkeeping or compliance requirements for eligible small businesses are the same as those in effect prior to the amendments.

Rural Area Flexibility Analysis

Although substantive changes were made to the proposed rule, a regulatory flexibility analysis is not necessary because the changes do not impose an adverse impact on public or private sector interests located in rural areas, nor does it impose reporting, recordkeeping or other compliance requirements on public or private sector interests located in rural areas of the state.

The rules as adopted reflect amendments to Federal regulations pursuant to which displacees to be relocated as a result of a Department of Transportation highway project are provided moving and relocation benefits. Any reporting, recordkeeping or compliance requirements for eligible public and private sector interests located in rural areas of the state are the same as those in effect prior to the amendment.

Job Impact Statement

This rule conforms State regulations to Federal regulations relating to relocation assistance benefits that are available to displacees to be relocated as a result of a Department of Transportation highway project. It is determined that the rule will have no impact on jobs and employment opportunities.

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

Specific reasons underlying the finding of necessity: Recent Decisions issued by Board Panels have interpreted the current regulation as requiring reports of independent medical examinations (IMEs) be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays, and that U.S. Post Offices are not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is precluded and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, workers' compensation insurance carrier/self-insured employer, claimant's treating provider and representative, and the claimant it is not possible to send the report by facsimile or electronic means. The recent Decisions have greatly, negatively impact the professionals who conduct IMEs, the IME entities, insurance carriers and self-insured employers. When untimely reports are precluded, the insurance carriers and self-insured employers are prevented from adequately defending their position. Accordingly, emergency adoption of this rule is necessary.

Subject: Filing written reports of independent medical examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the board and furnished to all others.

Text of emergency rule:

Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 24, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 486-9564, e-mail: Office-ofGeneralCounsel@wcb.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations

I.D. No. WCB-03-08-00001-E

Filing No. 1407

Filing date: Dec. 26, 2007

Effective date: Dec. 26, 2007

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137

2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed."

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed."

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed."

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule.

Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.