

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

EMERGENCY RULE MAKING

Authorization and Education Requirements for Mortgage Loan Originators

I.D. No. BNK-01-08-00020-E

Filing No. 1379

Filing date: Dec. 18, 2007

Effective date: Dec. 18, 2007

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

Action taken: Addition of Part 420 and Supervisory Procedure MB 107 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-E

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

Specific reasons underlying the finding of necessity: The Banking Department finds that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest.

The Legislature, in adopting article 12-E of the Banking Law, has determined that regulation of persons who originate mortgage loans on

residential real property by the Superintendent of Banks (“Superintendent”) is necessary to ensure the public welfare.

Article 12-E becomes effective Jan. 1, 2008. The legislation requires the Superintendent to adopt implementing regulations prior to that date. Such adoption is necessary in order for mortgage bankers, mortgage brokers and mortgage loan originators (“MLOs”) to understand their obligations under the new legislation, to file the necessary applications and to plan compliance.

The process of working with other regulatory and self-regulatory organizations involved in the process of developing the nationwide MLO information system, devising and drafting the regulations necessary to implement the new legislation and consulting with other government agencies and industry groups on the new regulatory framework has taken significant time. Consequently, it will not be possible to complete the process for proposing and adopting permanent rules set forth in section 202 of SAPA by Jan. 1, 2008.

Immediate adoption of the regulation is necessary to enable the Banking Department to begin the MLO registration process as soon as possible. It is also necessary to establish the form and manner of application, and the amount of the application fee, so as to enable individuals who seek to originate mortgages after Jan. 1, 2008 to file their applications with the Banking Department. Under new section 599(c)(6) of the Banking Law, if such individuals were not employed as MLOs prior to that date, they may not engage in mortgage loan origination until the Department has received their application.

Subject: Authorization and education requirements for mortgage loan originators.

Purpose: To require persons who originate mortgage loans on residential real property to regulation on or after Jan. 1, 2008 to be authorized by the Superintendent of Banks; set forth application, exemption and approval procedures for authorization as a mortgage loan Originator (MLO); and set forth education requirements for MLOs, describe prohibited conduct and set forth penalties. Proposed Supervisory Procedures MB 107 sets forth the details of the application procedures.

Substance of emergency rule: Section 420.1 summarizes Section 599-c of the Banking Law, which describes the authorization and application process to become a Mortgage Loan Originator (MLO), and Section 599-g of the Banking Law, which describes the grounds for suspension or revocation of an MLO authorization.

Section 420.2 summarizes the exemptions from the requirement to register as an MLO that are contained in Section 599-e of the Banking Law.

Section 420.3 contains a number of definitions of terms that are used in Part 420, including the crucial terms “Mortgage Loan Originator, Mortgage Loan Originating, and Originating Entity.”

Section 420.4 sets forth the application procedure for initial authorization as an MLO. It includes two grace periods that are contained in the Banking Law, and one that is being adopted by the Superintendent of Banks under authority granted in Section 599-h of the Banking Law and Section 5 of chapter 749 of the laws of 2006. Specifically, a person who was employed by or affiliated with an Originating Entity as an MLO prior to January 1, 2008 may continue to engage in Mortgage Loan Originating until the earlier of January 1, 2010 or the date such person receives notice from the Superintendent that his or her application has been denied. Such a person must file an application to become authorized by July 1, 2008, or such later date as the Superintendent may agree with such MLO’s Originating Entity. A person who is initially employed by or affiliated with an Originating Entity as an MLO on or after January 1, 2008 may engage

in Mortgage Loan Originating after April 1, 2008 only if he or she has submitted an application, fingerprints and required fees in accordance with Part 420 and either such person or his or her Originating Entity has received notice from the Superintendent that his or her application has been accepted for processing and has not received notice that such application has been denied.

This Section also sets forth information as to the elements of an application for authorization.

Section 420.5 allows Originating Entities to employ certain persons after the January 1, 2008 effective date of the MLO provisions of the Banking Law, even though they have not yet become authorized.

Section 420.6 sets forth the method in which the Superintendent will notify applicants of the approval or denial of an application to become an authorized MLO. It summarizes the statutory grounds on which the Superintendent may deny an application. It also repeats the statutory requirement that the Superintendent maintain on the Department's website a list of authorized MLOs.

Section 420.7 describes the "inactive status" that occurs during any period when an MLO is not employed by or affiliated with a mortgage banker or mortgage banker licensed under Article 12-D of the Banking Law, and the requirements placed on Originating Entities to notify the Superintendent when that occurs.

Section 420.8 describes the grounds for suspension and expiration of authorization as an MLO, including failure to timely pay the annual authorization fee and failure to timely complete the education requirements. It also makes clear that the suspension or expiration of an authorization does not affect the MLO's civil or criminal liability for acts committed prior to the suspension or expiration.

Section 420.9 describes the procedures for annual renewal of an authorization as an MLO.

Section 420.10 contains the requirements for surrender of an authorization as an MLO. It also makes clear that the surrender of an authorization does not affect the MLO's civil or criminal liability for acts committed prior to the surrender.

Section 420.11 first sets forth the education requirements that apply as a condition to initial authorization and as a condition to annual renewal of authorization. Second, it requires each Originating Entity to obtain proof, in the form of certificates of course completion in the form required by the Superintendent, that each MLO employed by or affiliated with it has completed the required Education Courses. Third, the rule sets out the education requirements (i.e. required number of hours of Education Courses) that must be completed by MLOs, as well as the requirements with respect to course content. Fourth, the Section describes the consequences of failure to comply with the education requirements and the procedure for requesting variances and extensions. Finally, the Section defines, for purposes of Section 599-e, an educational program that is substantially equivalent to the requirements for non-exempt MLOs. This is important to MLOs employed by or affiliated with certain Originating Entities that are subsidiaries or affiliates of certain banking organizations, which are required by the Banking Law, as a condition to their exemption from the authorization provisions of the statute, to provide Education Courses that are the substantial equivalent of those provided by non-exempt entities.

Section 420.12 summarizes the provisions of Article 12-E of the Banking Law with respect to persons or entities authorized to provide Education Courses. Some such entities are authorized in the statute to give Education Courses (referred to in Section 420 as "Authorized Providers"). Others must be approved by the Superintendent (referred to in Section 420 as "Approved Providers"). Second, the Section describes the application process for those providers that must be approved by the Superintendent. Third, it also requires Authorized Providers nevertheless to give notice to the Superintendent that they plan to provide Education Courses to MLOs in this state and provide the Superintendent with information about such courses. Fourth, the Section sets forth the procedure whereby Approved Providers must obtain approval for particular Education Courses. Fifth, the section contains rules with respect to advertising that a course has been approved by the Superintendent. Sixth, it describes information about Approved Providers, approved Education Courses, and Authorized Providers that will be listed on the Department's website. Seventh, the section notes that the Superintendent may approve Education Courses that meet the requirements of another jurisdiction that the Superintendent determines meet the standards of Article 12-E and provides for a list of such jurisdictions to be posted on the Department's website. Eighth, the Section requires Authorized Providers and Approved Providers to file an annual report with the Superintendent that provides certain information with re-

spect to the Education Courses given by it for which it has granted a certificate of course completion to a New York MLO. Finally, it provides for the examination of providers of Education Courses and for revocation of the authorization to act as such provider.

Section 420.13 provides for certain fees for an initial authorization application and an annual re-authorization application.

Section 420.14 contains certain duties of Originating Entities.

Section 420.15 contains certain duties of MLOs.

Section 420.16 contains conduct that is prohibited to an MLO (including conduct that is prohibited under Part 38.7 of the General Regulations of the Banking Board) and conduct that is prohibited to an Originating Entity.

Section 420.17 summarizes the circumstances in which the Superintendent may revoke a person's authorization as an MLO or suspend such authorization. It also states that an order of suspension may include, as a condition of reinstatement, that restitution be made to consumers with respect to fees or other charges that the MLO has improperly charged or collected, as determined by the Superintendent. Furthermore, it reminds MLOs that, under Section 44 of the Banking Law, the Superintendent may impose fines against MLOs. The section sets forth a number of grounds for disciplinary action, and states that administrative hearings will be conducted under Supervisory Procedure G111.

Section 420.18 provides that Section 420 will be effective immediately upon adoption.

Supervisory Procedure 107

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for authorization and applications for annual re-authorization of MLOs.

Section 107.2 contains general information about applications for authorization and annual re-authorization as an MLO, including the address where certain parts of the application for authorization must be mailed.

Section 107.3 describes the parts of an application for initial authorization and states that a sample of the application form (which must be completed online) may be found on the Department's website. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant's credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other information that may be required by the Superintendent. It also describes the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual re-authorization of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department's website, by email, by mail, and by telephone.

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 16, 2008.

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

Regulatory Impact Statement

1. Statutory Authority. Article 12-E of the Banking Law, as amended by the Legislature in 2007, creates a framework for the regulation of mortgage loan originators. Mortgage loan originators (MLO) are individuals employed by or affiliated with an originating entity who engage in mortgage loan originating. An originating entity means a person or entity licensed or registered pursuant to Article 12-D of the Banking Law. Article 12-E authorizes the Superintendent to make such rules and regulations as may in his or her judgment be necessary or appropriate for the effective administration or enforcement of this article.

Section 599-c of 12-E prohibits a person from engaging in mortgage loan originating without first being authorized by the Superintendent. In addition, it authorizes the Superintendent, in determining whether to grant authorization to an applicant, to assess the applicant's general character, fitness and education qualifications warrant a belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently. This section also requires the Superintendent to apply the same character and fitness standards to MLOs that apply to originating entities (i.e. mortgage bankers and mortgage brokers) pursuant to Sections 592 and 592-a, respectively, of Article 12-D of the Banking Law. As part of the authorization

process, MLOs are also required to pay a fee under 599-c. This fee can be adjusted annually by the Superintendent.

Section 599-d requires authorized MLOs to take continuing education courses relating to the current business of mortgage loan originating. These courses must include education in the statutory and regulatory requirements and judicial interpretations governing the mortgage industry and mortgage practices in New York, as well as courses in the ethics of mortgage loan originating and mortgage lending.

Section 599-f requires the originating entity to retain course credit documentation for each MLO and also requires the Superintendent to maintain an internet listing of all authorized MLOs.

Section 599-g gives the Superintendent grounds to revoke or suspend any mortgage loan originator's authorization where the MLO has violated Article 12-E or a rule or regulation promulgated by the Banking Board or the Superintendent under the Banking Law, or a federal law or regulation pertaining to mortgage banking, mortgage brokerage or loan originating, or if there is a substantial risk of public harm. Also, it allows the Superintendent to determine what measures should be taken to penalize an MLO who has engaged in dishonest or inequitable practices that may cause substantial harm to persons afforded protections under 12-D. This authority is specifically granted under Section 44 of Article 2 of the Banking Law, which authorizes the Superintendent to impose a fine against an MLO for any violation of the Banking Law, any regulation promulgated thereunder or any final or temporary order issued by the Superintendent.

2. Legislative Objectives. The legislature deems it necessary, in order to ensure the public welfare, that mortgage loan originators be subject to regulation by the Superintendent. The problems related to sub-prime lending require immediate attention, and enhanced supervision of the mortgage industry will address many of the concerns that have been identified in the sub-prime mortgage market. The legislation seeks to improve the integrity and professionalism of individuals in the mortgage lending industry. The bill has two main components: it requires the authorization (i.e., registration) of individual mortgage loan originators by the Banking Department, and it sets continuing educational standards for such individuals.

The legislative intent of the authorized mortgage loan originators (MLO) law was to create a level of consistency between the authorization process of mortgage entities found in Article 12-D of the Banking Law and Article 12-E; and 12-D is referenced throughout the statute. The Legislature deemed it necessary to regulate MLOs and originating entities on the same level. Thus, many of the regulatory requirements made pursuant to Article 12-D were referenced and borrowed to maintain consistency between Articles 12-E and 12-D.

The continuing education requirements, similar to those imposed on insurance brokers and real estate brokers, ensure that individuals engaging in the business of mortgage loan origination have a solid understanding of the mortgage business as well as an understanding of ethical business practices and relevant federal and state laws and regulations. In addition, the continuing education component of the law recognizes that laws, regulations and practices governing the mortgage industry are subject to continuing change and requires those individuals involved in mortgage origination to maintain an understanding of these changes.

3. Needs and Benefits. This regulation is needed to implement the statute and is necessary to address problems that have surfaced over the past year in the mortgage industry. Increased oversight of mortgage loan originators is necessary to curb disreputable and deceptive businesses practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The registration of MLOs will greatly assist the department in its efforts to oversee the mortgage industry and protect consumers. The regulation will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are authorized by the Department. The Department estimates as many as 40,000 originators may register in 2008.

In addition to including statutory requirements, the regulation requires MLO applications to be submitted electronically, specifies particular conduct which is prohibited, imposes requirements upon originating entities that employ MLOs and upon providers of continuing education.

These regulatory requirements will improve accountability among mortgage industry professionals, protect and promote the integrity of the mortgage industry, and improve the quality of service, thereby helping to restore consumer confidence.

4. Costs. The mortgage business will experience increased costs associated with the continuing education requirements and the fees associated with MLO authorization and annual re-authorization. The regulation sets

forth an investigatory background check fee of \$125, an initial authorization processing fee of \$50 and an annual authorization fee of \$50. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. The latter two fees will be posted on the Department's website. The cost of continuing education is estimated to be approximately \$500 every two years. Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval. Providers will, however, charge MLOs fees for attending the continuing education courses. The Department's increased effectiveness in fighting mortgage fraud and predatory lending is expected to lower costs related to litigation and to decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

The regulation will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates. None.

6. Paperwork. An application process will be established for an MLO to apply for authorization electronically and to submit additional background information to the Mortgage Banking Division of the Banking Department. The electronic application form requests information about the applicant's educational and employment background, as well as certain information about legal proceedings involving the applicant. The additional information will consist of fingerprints, a recent credit report, and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. Persons or entities seeking to be approved by the Superintendent as education providers must submit an application for provider approval and separate applications for course approval. Originating entities must also submit to the Department four reports per year documenting currently employed or affiliated MLOs, and dismissals of MLOs for alleged or actual violations.

7. Duplication. The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives. The industry has supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry has been involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight where none previously existed. The purpose of the regulation is to address problems that have arisen in the mortgage market while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. For example, the Department considered an examination requirement for mortgage loan originators, as is currently the practice with real estate brokers and sales persons. The Department, however, believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. Similarly, the Department discussed whether it was desirable to require that MLO's with less than four years' experience to obtain continuing education only in a traditional live classroom setting, to facilitate the answering of questions and to ensure a high level of attention. Although the Department believes this may be the most desirable educational setting for inexperienced MLOs, the Department, concluded that alternative settings for continuing education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties. Such alternative settings may include online programs, web casts, video conferences, teleconferences, and computer-based training programs. The Department also considered specifying a number of obligations of MLOs in avoiding predatory lending practices. However, discussions with representatives of the industry raised a number of inconsistencies between such duties and the duties already placed on mortgage bankers and mortgage brokers. Accordingly, the Department determined that the standards for MLOs with respect to subprime mortgages should be the same as those that apply to mortgage bankers and mortgage brokers under Part 38.7 of the General Regulations of the Banking Board. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute.

9. Federal Standards. While federal regulators have issued guidance on the origination of mortgage products, the responsibility for regulating non-bank entities such as mortgage bankers and mortgage brokers is largely assumed by the states. Moreover, as the mortgage industry has fragmented

in recent years, a significant share of the residential mortgage business, particularly the non-prime sector, has been served by these entities, which are typically licensed through state agencies. The New York State Banking Department currently licenses over 2,700 such entities. State regulators, through the Conference of State Bank Supervisors (CSBS), are developing a nationwide registry of mortgage lenders, mortgage brokers and mortgage loan originators to assist regulators in identifying and tracking individuals who have engaged in predatory origination practices. New York has participated in the development of this system and will be using it as part of its MLO authorization program.

10. Compliance Schedule. The emergency regulation will become effective upon filing; and the Department expects to begin receiving applications through the web-based National Mortgage Licensing System on or about January 2, 2008. By January 15, 2008, mortgage originating entities must provide the Superintendent with a report of MLOs employed by or affiliated with them on December 31, 2008. Each Mortgage Loan Originator who was employed by or affiliated with an originating entity before January 1, 2008, must file an application to be authorized by July 1, 2008 (or such later date as the Superintendent may agree with such MLO's originating entity). To make this process minimally disruptive to the industry, the regulation allows these "grandfathered" mortgage loan originators to continue to engage in origination on while the Department conducts the necessary background checks. An individual who became employed by or affiliated with an originating entity for the first time on or after January 1, 2008 may not originate mortgages after April 1, 2008 until he or she has filed an application (along with the necessary fees and fingerprint cards) and received notice from the Department that the application has been received. These MLOs may then continue to originate mortgages unless they are given notice that their application has been denied. In instances in which applications are incomplete, the MLO will be given thirty days to remedy the deficiency.

Individuals who engaged in mortgage loan origination before January 2008 will have until January 1, 2010 to comply with the initial education requirements. Those who became employed on or after January 1, 2008 must complete the initial education requirements by the end of the year in which the first anniversary of their authorization occurs.

Regulatory Flexibility Analysis

1. Effect of the Rule: The regulation will not have any impact on local governments. However, the majority of originating entities (i.e., licensed and registered mortgage bankers and mortgage brokers who employ or are affiliated with mortgage loan originators are considered small businesses. In excess of 2,700 of these businesses are licensed or registered by the Department.

2. Compliance Requirements: The bill has two main components: it requires the authorization (i.e., registration) of individual mortgage loan originators by the Banking Department, and it sets continuing educational standards for such individuals. The small businesses that MLOs are employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly authorized, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. Some education providers seeking to participate in the MLO continuing education program may also be small businesses. Those providers must submit an application for provider approval and separate applications for course approval and maintain records of course programs and attendance.

3. Professional Services: None.

4. Compliance Costs: Some mortgage entities may choose to pay for costs associated with authorization and annual re-authorization for their MLOs and continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal. Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval. Providers may, however, recover these expenses by charging fees for attending the continuing education courses.

5. Economic and Technological Feasibility: The rule-making should impose no adverse economic or technological burden on mortgage bankers and brokers who are small businesses.

6. Minimizing Adverse Impacts: The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, these businesses were involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight where none previously existed without having an adverse impact on small business. The Department worked with mortgage businesses during rule development to minimize adverse impacts in many instances. For example, we considered an examination requirement for mortgage loan originators, as is currently the practice with real estate brokers and sales persons. The Department, however, believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. Similarly, the Department discussed whether it was desirable to require that MLO's with less than four years' experience to obtain continuing education only in a traditional live classroom setting, to facilitate the answering of questions and to ensure a high level of attention. Although the Department believes this may be the most desirable educational setting for inexperienced MLOs, the Department, concluded that alternative settings for continuing education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties. Such alternative settings may include online programs, web casts, video conferences, teleconferences, and computer-based training programs. The Department also considered specifying a number of obligations of MLOs in avoiding predatory lending practices. However, discussions with representatives of the industry raised a number of inconsistencies between such duties and the duties already placed on mortgage bankers and mortgage brokers. Accordingly, the Department determined that the standards for MLOs with respect to subprime mortgages should be the same as those that apply to mortgage bankers and mortgage brokers under Part 38.7 of the General Regulations of the Banking Board. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute.

7. Small Business and Local Government Participation: Representatives of the following entities have been invited to participate in a number of outreach meetings that were conducted during both the statutory and regulatory drafting process: New York Association of Mortgage Brokers; New York Bankers Association; Empire State Mortgage Bankers Association; Citigroup; HSBC; Mortgage Bankers Association; and representatives from GORR.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas. The New York State Banking Department currently licenses over 2,700 mortgage bankers and brokers throughout the state and anticipates that up to 40,000 mortgage loan originators may register in 2008. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the proposal.

Compliance Requirements. Mortgage loan originators in rural areas must be authorized by the Superintendent to engage in the business of mortgage loan origination. An application process will be established requiring an MLO to apply for authorization electronically and to submit additional background information to the Mortgage Banking Division of the Banking Department. This additional information will consist of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly authorized, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. Education providers seeking to participate in the MLO continuing education program must submit an application for provider approval and separate applications for course approval. Originating entities must also submit to the Department four reports per year documenting currently employed or affiliated MLOs, and dismissals of MLOs for alleged or actual violations. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs. Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with authorization and re-authorization of their MLOs,

but are not required to do so. The regulation sets forth a background investigation fee of \$125.00, an initial authorization processing fee of \$50.00 and an annual authorization fee of \$50.00. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. The latter two fees will be posted on the Department's website. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval. Providers will, however, charge MLOs fees for attending the continuing education courses. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts. The industry has supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry has been involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on mortgage companies in rural areas. In addition, the Department considered an examination requirement for mortgage loan originators, as is currently the practice with real estate brokers and sales persons. The Department, however, believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. The Department noted opposition related to requiring MLOs with less than four years experience to obtain continuing education only in a traditional face-to-face setting. Although this may be the most desirable educational setting for inexperienced MLOs, alternative forums for continued education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties in rural areas. Discussions with representatives of the industry also revealed objections to certain provisions of the regulation which related to duties of mortgage loan originators and prohibited conduct. In their view these standards were not consistent with those previously set forth for brokers and mortgage bankers. As requested by the industry, the Department modified the proposal, bringing it into conformity with the mortgage industry standards established in Part 38.7 of the General Regulations of the Banking Board. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute and minimize adverse impacts wherever possible.

Rural Area Participation. Representatives of the following entities have been invited to participate in a number of outreach meetings that were conducted during both the statutory and regulatory drafting process: New York Association of Mortgage Brokers; New York Bankers Association; Empire State Mortgage Bankers Association; Citigroup; HSBC; Mortgage Bankers Association. These entities include mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas.

Job Impact Statement

Article 12-E of the Banking Law sets forth conditions under which certain individuals may be authorized by the Superintendent to engage in the business of mortgage loan origination. This regulation requires Mortgage Loan Originator applicants to meet those statutorily set qualifications for authorization as a Mortgage Loan Originator (MLO) and fulfill the statutory continuing education requirements. The Department acknowledges that applicants who fail to qualify for authorization will be barred from employment as MLOs. However, it is apparent that any impact on jobs and employment opportunities is due to the nature and purpose of the statute rather than the provisions of this proposal.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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I.D. No. BNK-01-08-00019-P

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

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Substance of proposed rule (Full text is posted at the following State website: www.banking.state.ny.us): Section 420.1 summarizes Section 599-c of the Banking Law, which describes the authorization and application process to become a Mortgage Loan Originator (MLO), and Section 599-g of the Banking Law, which describes the grounds for suspension or revocation of an MLO authorization.

Section 420.2 summarizes the exemptions from the requirement to register as an MLO that are contained in Section 599-e of the Banking Law.

Section 420.3 contains a number of definitions of terms that are used in Part 420, including the crucial terms "Mortgage Loan Originator, Mortgage Loan Originating, and Originating Entity."

Section 420.4 sets forth the application procedure for initial authorization as an MLO. It includes two grace periods that are contained in the Banking Law, and one that is being adopted by the Superintendent of Banks under authority granted in Section 599-h of the Banking Law and Section 5 of chapter 749 of the laws of 2006. Specifically, a person who was employed by or affiliated with an Originating Entity as an MLO prior to January 1, 2008 may continue to engage in Mortgage Loan Originating until the earlier of January 1, 2010 or the date such person receives notice from the Superintendent that his or her application has been denied. Such a person must file an application to become authorized by July 1, 2008, or such later date as the Superintendent may agree with such MLO's Originating Entity. A person who is initially employed by or affiliated with an Originating Entity as an MLO on or after January 1, 2008 may engage in Mortgage Loan Originating after April 1, 2008 only if he or she has submitted an application, fingerprints and required fees in accordance with Part 420 and either such person or his or her Originating Entity has received notice from the Superintendent that his or her application has been accepted for processing and has not received notice that such application has been denied.

This Section also sets forth information as to the elements of an application for authorization.

Section 420.5 allows Originating Entities to employ certain persons after the January 1, 2008 effective date of the MLO provisions of the Banking Law, even though they have not yet become authorized.

Section 420.6 sets forth the method in which the Superintendent will notify applicants of the approval or denial of an application to become an authorized MLO. It summarizes the statutory grounds on which the Superintendent may deny an application. It also repeats the statutory requirement that the Superintendent maintain on the Department's website a list of authorized MLOs.

Section 420.7 describes the "inactive status" that occurs during any period when an MLO is not employed by or affiliated with a mortgage banker or mortgage banker licensed under Article 12-D of the Banking Law, and the requirements placed on Originating Entities to notify the Superintendent when that occurs.

Section 420.8 describes the grounds for suspension and expiration of authorization as an MLO, including failure to timely pay the annual authorization fee and failure to timely complete the education requirements. It also makes clear that the suspension or expiration of an authorization does not affect the MLO's civil or criminal liability for acts committed prior to the suspension or expiration.

Section 420.9 describes the procedures for annual renewal of an authorization as an MLO.

Section 420.10 contains the requirements for surrender of an authorization as an MLO. It also makes clear that the surrender of an authorization does not affect the MLO's civil or criminal liability for acts committed prior to the surrender.

Section 420.11 first sets forth the education requirements that apply as a condition to initial authorization and as a condition to annual renewal of authorization. Second, it requires each Originating Entity to obtain proof, in the form of certificates of course completion in the form required by the

Superintendent, that each MLO employed by or affiliated with it has completed the required Education Courses. Third, the rule sets out the education requirements (i.e. required number of hours of Education Courses) that must be completed by MLOs, as well as the requirements with respect to course content. Fourth, the Section describes the consequences of failure to comply with the education requirements and the procedure for requesting variances and extensions. Finally, the Section defines, for purposes of Section 599-e, an educational program that is substantially equivalent to the requirements for non-exempt MLOs. This is important to MLOs employed by or affiliated with certain Originating Entities that are subsidiaries or affiliates of certain banking organizations, which are required by the Banking Law, as a condition to their exemption from the authorization provisions of the statute, to provide Education Courses that are the substantial equivalent of those provided by non-exempt entities.

Section 420.12 summarizes the provisions of Article 12-E of the Banking Law with respect to persons or entities authorized to provide Education Courses. Some such entities are authorized in the statute to give Education Courses (referred to in Section 420 as "Authorized Providers"). Others must be approved by the Superintendent (referred to in Section 420 as "Approved Providers"). Second, the Section describes the application process for those providers that must be approved by the Superintendent. Third, it also requires Authorized Providers nevertheless to give notice to the Superintendent that they plan to provide Education Courses to MLOs in this state and provide the Superintendent with information about such courses. Fourth, the Section sets forth the procedure whereby Approved Providers must obtain approval for particular Education Courses. Fifth, the section contains rules with respect to advertising that a course has been approved by the Superintendent. Sixth, it describes information about Approved Providers, approved Education Courses, and Authorized Providers that will be listed on the Department's website. Seventh, the section notes that the Superintendent may approve Education Courses that meet the requirements of another jurisdiction that the Superintendent determines meet the standards of Article 12-E and provides for a list of such jurisdictions to be posted on the Department's website. Eighth, the Section requires Authorized Providers and Approved Providers to file an annual report with the Superintendent that provides certain information with respect to the Education Courses given by it for which it has granted a certificate of course completion to a New York MLO. Finally, it provides for the examination of providers of Education Courses and for revocation of the authorization to act as such provider.

Section 420.13 provides for certain fees for an initial authorization application and an annual re-authorization application.

Section 420.14 contains certain duties of Originating Entities.

Section 420.15 contains certain duties of MLOs.

Section 420.16 contains conduct that is prohibited to an MLO (including conduct that is prohibited under Part 38.7 of the General Regulations of the Banking Board) and conduct that is prohibited to an Originating Entity.

Section 420.17 summarizes the circumstances in which the Superintendent may revoke a person's authorization as an MLO or suspend such authorization. It also states that an order of suspension may include, as a condition of reinstatement, that restitution be made to consumers with respect to fees or other charges that the MLO has improperly charged or collected, as determined by the Superintendent. Furthermore, it reminds MLOs that, under Section 44 of the Banking Law, the Superintendent may impose fines against MLOs. The section sets forth a number of grounds for disciplinary action, and states that administrative hearings will be conducted under Supervisory Procedure G111.

Section 420.18 provides that Section 420 will be effective immediately upon adoption.

Supervisory Procedure 107

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for authorization and applications for annual re-authorization of MLOs.

Section 107.2 contains general information about applications for authorization and annual re-authorization as an MLO, including the address where certain parts of the application for authorization must be mailed.

Section 107.3 describes the parts of an application for initial authorization and states that a sample of the application form (which must be completed online) may be found on the Department's website. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant's credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other

information that may be required by the Superintendent. It also describes the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual re-authorization of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department's website, by email, by mail, and by telephone.

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

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

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

Regulatory Impact Statement

1. Statutory Authority. Article 12-E of the Banking Law, as amended by the Legislature in 2007, creates a framework for the regulation of mortgage loan originators. Mortgage loan originators (MLO) are individuals employed by or affiliated with an originating entity who engage in mortgage loan originating. An originating entity means a person or entity licensed or registered pursuant to Article 12-D of the Banking Law. Article 12-E authorizes the Superintendent to make such rules and regulations as may in his or her judgment be necessary or appropriate for the effective administration or enforcement of this article.

Section 599-c of 12-E prohibits a person from engaging in mortgage loan originating without first being authorized by the Superintendent. In addition, it authorizes the Superintendent, in determining whether to grant authorization to an applicant, to assess the applicant's general character, fitness and education qualifications warrant a belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently. This section also requires the Superintendent to apply the same character and fitness standards to MLOs that apply to originating entities (i.e. mortgage bankers and mortgage brokers) pursuant to Sections 592 and 592-a, respectively, of Article 12-D of the Banking Law. As part of the authorization process, MLOs are also required to pay a fee under 599-c. This fee can be adjusted annually by the Superintendent.

Section 599-d requires authorized MLOs to take continuing education courses relating to the current business of mortgage loan originating. These courses must include education in the statutory and regulatory requirements and judicial interpretations governing the mortgage industry and mortgage practices in New York, as well as courses in the ethics of mortgage loan originating and mortgage lending.

Section 599-f requires the originating entity to retain course credit documentation for each MLO and also requires the Superintendent to maintain an internet listing of all authorized MLOs.

Section 599-g gives the Superintendent grounds to revoke or suspend any mortgage loan originator's authorization where the MLO has violated Article 12-E or a rule or regulation promulgated by the Banking Board or the Superintendent under the Banking Law, or a federal law or regulation pertaining to mortgage banking, mortgage brokerage or loan originating, or if there is a substantial risk of public harm. Also, it allows the Superintendent to determine what measures should be taken to penalize an MLO who has engaged in dishonest or inequitable practices that may cause substantial harm to persons afforded protections under 12-D. This authority is specifically granted under Section 44 of Article 2 of the Banking Law, which authorizes the Superintendent to impose a fine against an MLO for any violation of the Banking Law, any regulation promulgated thereunder or any final or temporary order issued by the Superintendent.

2. Legislative Objectives. The legislature deems it necessary, in order to ensure the public welfare, that mortgage loan originators be subject to regulation by the Superintendent. The problems related to sub-prime lending require immediate attention, and enhanced supervision of the mortgage industry will address many of the concerns that have been identified in the sub-prime mortgage market. The legislation seeks to improve the integrity and professionalism of individuals in the mortgage lending industry. The bill has two main components: it requires the authorization (i.e., registration) of individual mortgage loan originators by the Banking Department, and it sets continuing educational standards for such individuals.

The legislative intent of the authorized mortgage loan originators (MLO) law was to create a level of consistency between the authorization process of mortgage entities found in Article 12-D of the Banking Law and Article 12-E; and 12-D is referenced throughout the statute. The Legislature deemed it necessary to regulate MLOs and originating entities on the

same level. Thus, many of the regulatory requirements made pursuant to Article 12-D were referenced and borrowed to maintain consistency between Articles 12-E and 12-D.

The continuing education requirements, similar to those imposed on insurance brokers and real estate brokers, ensure that individuals engaging in the business of mortgage loan origination have a solid understanding of the mortgage business as well as an understanding of ethical business practices and relevant federal and state laws and regulations. In addition, the continuing education component of the law recognizes that laws, regulations and practices governing the mortgage industry are subject to continuing change and requires those individuals involved in mortgage origination to maintain an understanding of these changes.

3. Needs and Benefits. This proposal is needed to implement the statute and is necessary to address problems that have surfaced over the past year in the mortgage industry. Increased oversight of mortgage loan originators is necessary to curb disreputable and deceptive businesses practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The registration of MLOs will greatly assist the department in its efforts to oversee the mortgage industry and protect consumers. The proposal will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are authorized by the Department. The Department estimates as many as 40,000 originators may register in 2008.

In addition to including statutory requirements, the proposal requires MLO applications to be submitted electronically, specifies particular conduct which is prohibited, imposes requirements upon originating entities that employ MLOs and upon providers of continuing education.

These regulatory requirements will improve accountability among mortgage industry professionals, protect and promote the integrity of the mortgage industry, and improve the quality of service, thereby helping to restore consumer confidence.

4. Costs. The mortgage business will experience increased costs associated with the continuing education requirements and the fees associated with MLO authorization and annual re-authorization. The proposal sets forth an investigatory background check fee of \$125, an initial authorization processing fee of \$50 and an annual authorization fee of \$50. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. The latter two fees will be posted on the Department's website. The cost of continuing education is estimated to be approximately \$500 every two years. Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval. Providers will, however, charge MLOs fees for attending the continuing education courses. The Department's increased effectiveness in fighting mortgage fraud and predatory lending is expected to lower costs related to litigation and to decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

The proposal will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates. None.

6. Paperwork. An application process will be established for an MLO to apply for authorization electronically and to submit additional background information to the Mortgage Banking Division of the Banking Department. The electronic application form requests information about the applicant's educational and employment background, as well as certain information about legal proceedings involving the applicant. The additional information will consist of fingerprints, a recent credit report, and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. Persons or entities seeking to be approved by the Superintendent as education providers must submit an application for provider approval and separate applications for course approval. Originating entities must also submit to the Department four reports per year documenting currently employed or affiliated MLOs, and dismissals of MLOs for alleged or actual violations.

7. Duplication. The proposed regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives. The industry has supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry has been

involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight where none previously existed. The purpose of the proposed regulation is to address problems that have arisen in the mortgage market while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. For example, the Department considered an examination requirement for mortgage loan originators, as is currently the practice with real estate brokers and sales persons. The Department, however, believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. Similarly, the Department discussed whether it was desirable to require that MLO's with less than four years' experience to obtain continuing education only in a traditional live classroom setting, to facilitate the answering of questions and to ensure a high level of attention. Although the Department believes this may be the most desirable educational setting for inexperienced MLOs, the Department, concluded that alternative settings for continuing education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties. Such alternative settings may include online programs, web casts, video conferences, teleconferences, and computer-based training programs. The Department also considered specifying a number of obligations of MLOs in avoiding predatory lending practices. However, discussions with representatives of the industry raised a number of inconsistencies between such duties and the duties already placed on mortgage bankers and mortgage brokers. Accordingly, the Department determined that the standards for MLOs with respect to subprime mortgages should be the same as those that apply to mortgage bankers and mortgage brokers under Part 38.7 of the General Regulations of the Banking Board. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute.

9. Federal Standards. While federal regulators have issued guidance on the origination of mortgage products, the responsibility for regulating non-bank entities such as mortgage bankers and mortgage brokers is largely assumed by the states. Moreover, as the mortgage industry has fragmented in recent years, a significant share of the residential mortgage business, particularly the non-prime sector, has been served by these entities, which are typically licensed through state agencies. The New York State Banking Department currently licenses over 2,700 such entities. State regulators, through the Conference of State Bank Supervisors (CSBS), are developing a nationwide registry of mortgage lenders, mortgage brokers and mortgage loan originators to assist regulators in identifying and tracking individuals who have engaged in predatory origination practices. New York has participated in the development of this system and will be using it as part of its MLO authorization program.

10. Compliance Schedule. The proposed regulation will become effective on January 1, 2008; and the Department expects to begin receiving applications through the web-based National Mortgage Licensing System on January 2, 2008. By January 15, 2008, mortgage originating entities must provide the Superintendent with a report of MLOs employed by or affiliated with them on December 31, 2008. Each Mortgage Loan Originator who was employed by or affiliated with an originating entity before January 1, 2008, must file an application to be authorized by July 1, 2008 (or such later date as the Superintendent may agree with such MLO's originating entity). To make this process minimally disruptive to the industry, the proposal allows these "grandfathered" mortgage loan originators to continue to engage in origination on while the Department conducts the necessary background checks. An individual who became employed by or affiliated with an originating entity for the first time on or after January 1, 2008 may not originate mortgages after April 1, 2008 until he or she has filed an application (along with the necessary fees and fingerprint cards) and received notice from the Department that the application has been received. These MLOs may then continue to originate mortgages unless they are given notice that their application has been denied. In instances in which applications are incomplete, the MLO will be given thirty days to remedy the deficiency.

Individuals who engaged in mortgage loan origination before January 2008 will have until January 1, 2010 to comply with the initial education requirements. Those who became employed on or after January 1, 2008 must complete the initial education requirements by the end of the year in which the first anniversary of their authorization occurs.

Regulatory Flexibility Analysis

1. Effect of Rule: The proposal will not have any impact on local governments. However, the majority of originating entities (i.e., licensed

and registered mortgage bankers and mortgage brokers who employ or are affiliated with mortgage loan originators are considered small businesses. In excess of 2,700 of these businesses are licensed or registered by the Department.

2. **Compliance Requirements:** The bill has two main components: it requires the authorization (i.e., registration) of individual mortgage loan originators by the Banking Department, and it sets continuing educational standards for such individuals. The small businesses that MLOs are employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly authorized, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. Some education providers seeking to participate in the MLO continuing education program may also be small businesses. Those providers must submit an application for provider approval and separate applications for course approval and maintain records of course programs and attendance.

3. **Professional Services:** None.

4. **Compliance Costs:** Some mortgage entities may choose to pay for costs associated with authorization and annual re-authorization for their MLOs and continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal. Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval. Providers may, however, recover these expenses by charging fees for attending the continuing education courses.

5. **Economic and Technological Feasibility:** The proposed rule-making should impose no adverse economic or technological burden on mortgage bankers and brokers who are small businesses.

6. **Minimizing Adverse Impacts:** The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, these businesses were involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight where none previously existed without having an adverse impact on small business. The Department worked with mortgage businesses during rule development to minimize adverse impacts in many instances. For example, we considered an examination requirement for mortgage loan originators, as is currently the practice with real estate brokers and sales persons. The Department, however, believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. Similarly, the Department discussed whether it was desirable to require that MLO's with less than four years' experience to obtain continuing education only in a traditional live classroom setting, to facilitate the answering of questions and to ensure a high level of attention. Although the Department believes this may be the most desirable educational setting for inexperienced MLOs, the Department, concluded that alternative settings for continuing education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties. Such alternative settings may include online programs, web casts, video conferences, teleconferences, and computer-based training programs. The Department also considered specifying a number of obligations of MLOs in avoiding predatory lending practices. However, discussions with representatives of the industry raised a number of inconsistencies between such duties and the duties already placed on mortgage bankers and mortgage brokers. Accordingly, the Department determined that the standards for MLOs with respect to subprime mortgages should be the same as those that apply to mortgage bankers and mortgage brokers under Part 38.7 of the General Regulations of the Banking Board. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute.

7. **Small Business and Local Government Participation:** Representatives of the following entities have been invited to participate in a number of outreach meetings that were conducted during both the statutory and regulatory drafting process: New York Association of Mortgage Brokers;

New York Bankers Association; Empire State Mortgage Bankers Association; Citigroup; HSBC; Mortgage Bankers Association; and representatives from GORR.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas. The New York State Banking Department currently licenses over 2,700 mortgage bankers and brokers throughout the state and anticipates that up to 40,000 mortgage loan originators may register in 2008. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the proposal.

Compliance Requirements. Mortgage loan originators in rural areas must be authorized by the Superintendent to engage in the business of mortgage loan origination. An application process will be established requiring an MLO to apply for authorization electronically and to submit additional background information to the Mortgage Banking Division of the Banking Department. This additional information will consist of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly authorized, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. Education providers seeking to participate in the MLO continuing education program must submit an application for provider approval and separate applications for course approval. Originating entities must also submit to the Department four reports per year documenting currently employed or affiliated MLOs, and dismissals of MLOs for alleged or actual violations. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs. Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with authorization and re-authorization of their MLOs, but are not required to do so. The proposal sets forth a background investigation fee of \$125.00, an initial authorization processing fee of \$50.00 and an annual authorization fee of \$50.00. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. The latter two fees will be posted on the Department's website. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval. Providers will, however, charge MLOs fees for attending the continuing education courses. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts. The industry has supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry has been involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on mortgage companies in rural areas. In addition, the Department considered an examination requirement for mortgage loan originators, as is currently the practice with real estate brokers and sales persons. The Department, however, believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. The Department noted opposition related to requiring MLOs with less than four years experience to obtain continuing education only in a traditional face-to-face setting. Although this may be the most desirable educational setting for inexperienced MLOs, alternative forums for continued education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties in rural areas. Discussions with representatives of the industry also revealed objections to certain provisions of the regulation which related to duties of mortgage loan originators and prohibited conduct. In their view these standards were

not consistent with those previously set forth for brokers and mortgage bankers. As requested by the industry, the Department modified the proposal, bringing it into conformity with the mortgage industry standards established in Part 38.7 of the General Regulations of the Banking Board. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute and minimize adverse impacts wherever possible.

Rural Area Participation. Representatives of the following entities have been invited to participate in a number of outreach meetings that were conducted during both the statutory and regulatory drafting process: New York Association of Mortgage Brokers; New York Bankers Association; Empire State Mortgage Bankers Association; Citigroup; HSBC; Mortgage Bankers Association. These entities include mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas.

Job Impact Statement

Article 12-E of the Banking Law sets forth conditions under which certain individuals may be authorized by the Superintendent to engage in the business of mortgage loan origination. This proposal requires Mortgage Loan Originator applicants to meet those statutorily set qualifications for authorization as a Mortgage Loan Originator (MLO) and fulfill the statutory continuing education requirements. The Department acknowledges that applicants who fail to qualify for authorization will be barred from employment as MLOs. However, it is apparent that any impact on jobs and employment opportunities is due to the nature and purpose of the statute rather than the provisions of this proposal.

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Transportation.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Transportation, by deleting therefrom the position of Confidential Assistant and by increasing the number of positions of Legislative Coordinator from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-08-00002-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health under the subheading "Office of the Medicaid Inspector General," by increasing the number of positions of Deputy Medicaid Inspector General from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-08-00003-P

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-08-00004-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify positions in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by deleting therefrom the position of Special Office Assistant and by increasing the number of positions of Assistant Public Information Officer from 1 to 2 and Special Assistant from 5 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-08-00005-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Transportation.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Transportation, by decreasing the number of positions of Assistant Commissioner from 7 to 6 and by adding thereto the position of Deputy Commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00006-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Chief Budget Examiner from 12 to 13.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00007-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Education Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class in the Education Department, by adding thereto the position of Test Distribution Center Supervisor (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00008-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Environmental Conservation.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the position of Conservation Security Worker.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00009-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by adding thereto the position of Information Security Officer (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00010-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by increasing the number of positions of Compliance Specialist 1 from 1 to 4 and Compliance Specialist 2 from 1 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00011-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Parole," by increasing the number of positions of Assistant Deputy Director of Parole Operations from 2 to 3 and Assistant Parole Services Program Specialist from 7 to 10.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00012-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Transportation.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by increasing the number of positions of Engineering Intern from 5 to 35.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00013-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Banking Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Banking Department, by deleting therefrom the position of Fair Lending Specialist 2 (1) and by adding thereto the position of Director, Consumer Lending Regulation and Compliance (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00014-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by decreasing the number of positions of Quality of Care Facility Review Specialist 2 from

11 to 10 and by increasing the number of positions of ϕ Quality Care Facility Review Specialist 3 from 5 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00015-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Banking Department and the Executive Department.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Banking Department, by deleting therefrom the position of ϕ Chief Data Processing Services (1) and by adding thereto the position of ϕ Manager Information Technology Services 2 (1); in the Executive Department under the subheading "State Consumer Protection Board," by deleting therefrom the position of ϕ Supervisor of Data Processing (1) and by adding thereto the position of ϕ Information Technology Specialist 4 (1); in the Executive Department under the subheading "Division of Human Rights," by deleting therefrom the position of ϕ Chief of Data Processing Services (1) (Until first vacated after October 19, 1992) and by adding thereto the position of ϕ Manager Information Technology Services 2 (1); and, in the Executive Department under the subheading "Office for Technology," by deleting therefrom the position of ϕ Data Base Administrator (1) and by adding thereto the position of ϕ Manager Information Technology Services 1 Data Base (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-01-08-00016-P

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

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class and to delete positions from the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Human Rights," by adding thereto the positions of Associate Counsel (2); and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Human Rights," by decreasing the number of positions of Human Rights Specialist 1 from 15 to 13.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

Education Department

**EMERGENCY
RULE MAKING**

Universal Prekindergarten Programs

I.D. No. EDU-24-07-00027-E

Filing No. 1392

Filing date: Dec. 18, 2007

Effective date: Dec. 28, 2007

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

Action taken: Repeat of Subpart 151-1 and addition of new Subpart 151-1 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3602-e(1), (2) and (5)-(16); and L. 2007, ch. 57, part B, section 19

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, by establishing uniform quality standards and other requirements for universal prekindergarten programs, and to otherwise conform the Commissioner's regulations to the statute.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e to:

(1) eliminate the requirement that a district form a prekindergarten policy advisory board to make a recommendation to the Board of Education regarding whether the district should implement a prekindergarten program;

(2) allow one or more school districts to submit a joint application to operate a joint universal prekindergarten program with a maximum grant award equal to the sum of the grant awards computed for each participating district;

(3) require that universal prekindergarten programs provide for: (i) an assessment of the development of language, cognitive and social skills; (ii) staff development and teacher training for staff and teachers in all settings in which prekindergarten services are provided; and (iii) selection of eligible children to receive prekindergarten program services on a random basis, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program;

(4) require the Department to prescribe uniform quality standards for universal prekindergarten programs. This section also requires that the regulations of the Commissioner establish minimum curriculum standards to ensure that universal prekindergarten programs include curricula aligned with the State learning standards, that ensures continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve. Further, such regulations must include performance standards for prekindergarten programs, including procedures for assessing the performance of programs and mechanisms for tracking the progress of programs and reporting such progress to parents and the public. In addition, this section provides the Department with the authority to grant a waiver of any inconsistent provisions of the regulations to allow school districts that operated targeted prekindergarten programs in the 2006-2007 school year to continue to operate under the regulations that applied to the targeted prekindergarten program in that year.

The proposed amendment was adopted at the May 21-22, 2007 Regents meeting as an emergency measure, effective May 29, 2007, in order to immediately establish uniform quality standards and other requirements for universal prekindergarten programs that are consistent with Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, so that affected school districts may timely plan and implement such programs for the 2007-2008 school year pursuant to statutory requirements. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 13, 2007.

A second emergency adoption was taken at the July 25, 2007 Regents meeting for the preservation of the general welfare to ensure that the emergency rule adopted at the May Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

A third emergency adoption was taken at the September 10, 2007 Regents meeting to immediately adopt revisions to the rule in response to public comment and to otherwise ensure that the emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule. A Notice of Revised Rule Making was published in the State Register on September 12, 2007.

A fourth emergency adoption was taken at the October 22-23, 2007 Regents meeting to adopt revisions to provide additional flexibility with respect to the staffing of eligible agencies offering universal prekindergarten instruction, and to otherwise ensure that the emergency rule adopted at the May Regents meeting, and readopted at the July and September Regents meetings, remains continuously in effect until the effective date of its adoption as a permanent rule. A Notice of Revised Rule Making was published in the State Register on October 31, 2007.

The proposed rule has been adopted as a permanent rule at the December 13-14, 2007 Regents meeting. Pursuant to the State Administrative Procedure Act section 203(1), the earliest the adopted rule can become effective is upon its publication in the State Register on January 2, 2007. However, the October emergency rule will expire on December 27, 2007, 60 days after its filing with the Department of State on October 29, 2007. A lapse in the rule's effectiveness would disrupt implementation of universal prekindergarten programs under Education Law section 3602-e.

A fifth emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Universal prekindergarten programs.

Purpose: To conform Subpart 151-1 of the commissioner's regulations to Education Law section 3602-e, as amended by chapter 57 of the Laws of 2007, by establishing uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive process, and facility requirements.

Substance of emergency rule: The proposed amendment was previously adopted as an emergency rule at the May, July, September and October Regents meetings. The proposed amendment has been adopted as a permanent rule at the December 13-14, 2007 Regents Meeting. A fifth emergency action has also been adopted at the December meeting to ensure that the emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule. The following is a summary of the provisions of the December emergency rule.

Section 151-1.1 specifies that the purpose of this Subpart is to provide four-year-old children with universal opportunity to access prekindergarten programs.

Section 151-1.2 defines approved expenditures, eligible agencies, eligible child, and universal prekindergarten program plan.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require:

(1) use of curricula, aligned with the State learning standards, that ensures continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve

(2) early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) activities to be learner-centered and to designed promote a child's total growth and development;

(4) a process for assessing the developmental baseline and progress of all children participating in the program, which shall at a minimum provide for on-going assessment of the development of language, cognitive and social skills in children

(5) all prekindergarten students shall be screened as new entrants as set forth in Part 117 of Title 8; prekindergarten programs operating less than three hours shall provide a nutritional meal and/or snack; and programs operating more than three hours shall provide appropriate meals and snacks to ensure the nutritional needs of the children are met;

(6) a maximum class size of 20 children and that there be one teacher and one paraprofessional for classes up to 18 children and one teacher and two paraprofessionals for classes of 19 or 20 children;

(7) universal prekindergarten program teachers and paraprofessionals in both school district and eligible agency settings to meet minimum staff qualifications;

(8) school districts to provide fiscal and program oversight and be accountable for student progress in all prekindergarten classrooms in district and agency settings;

(9) professional development be based on the instructional needs of children and be provided to all teachers and staff in both district and agency settings;

(10) the development of procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(11) school districts to provide, either directly or through referral, support services to children and their families necessary to support the child's participation in the program.

Section 151-1.4 sets forth provisions related to the design of programs. Programs may be either full-day or half-day and must operate five days per week a minimum of 180 days per year. A district may operate a summer only program during the months of July and August only upon demonstrating to the Commissioner's satisfaction that the school district is unable to operate the program during the regular school session because of a lack of available space in both district buildings and eligible agencies. Unless waived by the Commissioner, a minimum of 10 percent of the total grant must be used for the provision of the instructional program through collaborative efforts with eligible agencies.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.4(e) provides that the environment and learning activities of the program shall be designed to promote and increase inclusion of preschool children with disabilities.

Section 151-1.4(f) provides that the program be designed to ensure that participating children with limited English proficiency are provided equal access to the program and opportunities to achieve the same program goals and standards as other participating children.

Section 151-1.5 establishes to application process by which school districts access their Universal Prekindergarten allocations. Two or more school districts may submit a joint application to operate a joint program with a maximum grant that is the sum of the allocation computed for each participating district. Provision is made for a written request to the Commissioner for a variance: (1) of the 10 percent set aside for collaboration as set forth in Education Law section 3602-e(5)(e); (2) class size requirements; (3) for districts that operated a targeted program under Subpart 151-2 in the 2006-2007 school year; and (4) for a summer only program, for district unable to operate during the regular school session.

Section 151-1.5(b)(7)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the

amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(a) and (b)(8) allow two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6 provides that school districts must use a competitive process to determine which eligible agencies will collaborate with the district for the provisions of the instructional program. This section establishes minimum requirements for the request for proposals and identified criteria to be used when evaluating responses to such request. Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

Section 151-1.7 states the facilities requirements for Universal Prekindergarten programs. These requirements are unchanged from the current regulation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-24-07-00027-EP, Issue of June 13, 2007. The emergency rule will expire February 15, 2008.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 3602-e(12) authorizes the Regents and the Commissioner to adopt regulations to implement the provisions of that section, relating to universal prekindergarten programs.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(3) and (4) to eliminate the requirement that a district form a prekindergarten policy advisory board to make a recommendation to the Board of Education regarding whether the district should implement a prekindergarten program.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(5) to allow one or more school district to submit a joint application to operate a joint universal prekindergarten program with a maximum grant award equal to the sum of the grant awards computed for each participating district.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(7) to require that universal prekindergarten programs provide for: (1) an assessment of the development of language, cognitive and social skills; (2) staff development and teacher training for staff and teachers in all settings in which prekindergarten services are provided; and (3) selection of eligible children to receive prekindergarten program services on a random basis, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Chapter 57 of the Laws of 2007 amended Education Law section 3602-e(12) to require the Department to prescribe uniform quality standards for universal prekindergarten programs. This section also requires that the regulations of the Commissioner establish minimum curriculum standards to ensure that universal prekindergarten programs have strong instructional content aligned with the State learning standards and integrated with the school district's instructional program in grades kindergarten through twelve. Further, such regulations must include performance standards for prekindergarten programs, including procedures for assessing the performance of programs and mechanisms for tracking the progress of programs and reporting such progress to parents and the public. In addition, this section provides the Department with the authority to grant a waiver of any inconsistent provisions of the regulations to allow school districts that operated targeted prekindergarten programs in the 2006-2007 school year to continue to operate under the regulations that applied to the targeted prekindergarten program in that year.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement changes to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007.

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform Subpart 151-1 to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007. Subpart 151-1 is repealed and a new Subpart 151-1 is added incorporating the required changes. Below is a summary of the new or enhanced provisions of the amended Subpart 151-1.

Section 151-1.2(b) redefines "eligible agencies" to include libraries and museums.

Section 151-1.2(d) eliminates the requirement that the program plan be developed and submitted to the Board by a prekindergarten policy advisory board.

Section 151-1.3 establishes uniform quality standards for universal prekindergarten classrooms, including both district-based and eligible agency-based settings, including that school districts:

- (1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;
- (2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;
- (3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;
- (4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;
- (5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;
- (6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;
- (7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and
- (8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4 requires:

(1) school districts to establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program;

(2) that the environment and learning activities of the program shall be designed to promote and increase inclusion of preschool children with disabilities; and

(3) that the program be designed to ensure that participating children with limited English proficiency are provided equal access to the program and opportunities to achieve the same program goals and standards as other participating children;

Section 151-1.5(b)(7)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(a) and (b)(8) allow two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

COSTS:

The proposed amendment is necessary to implement Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, and will not impose any costs beyond those inherent in the statute.

(a) Costs to State government: None.

(b) Costs to local government: Universal Prekindergarten is not a mandated program. For school districts opting to participate, the provisions that could be expected to have a cost impact are those associated with selection and implementation of curricula and assessments. These costs

will vary depending on the curricula and assessment(s) selected, the familiarity of the district's staff with those products and the size of the program. However, the anticipated cost for school districts would be minimal.

(c) Costs to private regulated parties: Eligible agencies contracting with school districts for the provision of the instructional program may be expected to initially experience some additional costs should they need to acquire additional materials and supplies necessary to implement the curricula and assessment(s) selected by the school district. These costs will be offset, in part if not entirely, by the fee for service paid by the school district.

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

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on local governments. Universal Prekindergarten is not a mandated program.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require school districts to:

(1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;

(2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;

(4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;

(5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;

(6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;

(7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.5(b)(4)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(b)(5) allows two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

PAPERWORK:

Each school district planning to receive an allocation to operate a universal prekindergarten program shall submit an application to the Department for approval, in a format and pursuant to a timeline prescribed by the Commissioner. The application shall include a written request for a variance where applicable.

Two or more school districts may submit a joint application to operate a joint program, in which case the application must also include a partnership agreement that specifies the roles and responsibilities of each school district for implementation and oversight of the program.

A final report, including such program and fiscal information as requested by the Department, shall be submitted within 30 days after the program ends.

School districts shall develop a competitive process, using a request for proposals, to determine which eligible agencies it will collaborate with to implement the program, including at minimum:

(1) a description of the services to be provided;

(2) a detailed narrative describing how the agency will meet the program's goals and objections;

(3) a description of the agency's staff qualifications; and

(4) a budget of proposed expenditures for services.

DUPLICATION:

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

ALTERNATIVES:

In developing the proposed amendment, the Department reviewed the requirements established for prekindergarten programs in several other states. Staff reviewed the quality program benchmarks established by the National Institute for Early Education Research, which publishes the annual State Preschool Yearbook, to identify areas of "best practice" where New York State could strengthen its requirements. In addition, staff reviewed and discussed a comparison of targeted and universal prekindergarten program requirements to identify areas where greater consistency could be achieved.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that school districts will be able to comply with the provisions of this amendment by September 1, 2007.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely conforms Subpart 151-1 of the Commissioner's Regulations to the provisions of Section 3602-e of Education Law as amended by Chapter 57 of the Laws of 2007, relating to universal prekindergarten programs operated by public school districts, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that small businesses will not be affected, no further measures are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to all universal prekindergarten programs operated by public school districts, regardless of the setting in which such services are provided.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform Subpart 151-1 to section 3602-e of Education Law, as amended by Chapter 57 of the Laws of 2007.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require school districts to:

(1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;

(2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;

(4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;

(5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;

(6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;

(7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be

served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.5(b)(4)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(b)(5) allows two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

Each school district planning to receive an allocation to operate a universal prekindergarten program shall submit an application to the Department for approval, in a format and pursuant to a timeline prescribed by the Commissioner. The application shall include a written request for a variance where applicable.

Two or more school districts may submit a joint application to operate a joint program, in which case the application must also include a partnership agreement that specifies the roles and responsibilities of each school district for implementation and oversight of the program.

A final report, including such program and fiscal information as requested by the Department, shall be submitted within 30 days after the program ends.

School districts shall develop a competitive process, using a request for proposals, to determine which eligible agencies it will collaborate with to implement the program, including at minimum:

- (1) a description of the services to be provided;
- (2) a detailed narrative describing how the agency will meet the program's goals and objections;
- (3) a description of the agency's staff qualifications; and
- (4) a budget of proposed expenditures for services.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment is necessary to implement Education Law section 3602-e, as added by Chapter 57 of the Laws of 2007, and does not impose any additional costs beyond those inherent in the statute. The new requirements will result in additional costs to school districts and eligible agencies, as follows:

(1) Universal Prekindergarten is not a mandated program. For school districts opting to participate, the provisions that could be expected to have a cost impact are those associated with selection and implementation of curricula and assessments. These costs will vary depending on the curricula and assessment(s) selected, the familiarity of the district's staff with those products and the size of the program. However, the anticipated cost for school districts would be minimal.

(2) Eligible agencies contracting with school districts for the provision of the instructional program may be expected to initially experience some additional costs should they need to acquire additional materials and supplies necessary to implement the curricula and assessment(s) selected by the school district. These costs will be offset, in part if not entirely, by the fee for service paid by the school district.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose new technological requirements on school districts. Economic feasibility is addressed in the Compliance requirements section above.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establishing differing requirements or to exempt school districts and eligible agencies from coverage by the rule, except where such waiver authority is statutorily stated. Nevertheless, in establishing the uniform quality standards and other provisions necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, the Department has considered a variety of options and selecting those approaches that will achieve the goal of increased program quality while minimizing additional costs and compliance requirements upon school districts and eligible agencies. For example, the proposed rule provides a transition period for eligible agencies to comply with the mini-

mum staff qualifications and establishes an alternative to teacher certification for teachers employed by eligible agencies.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. The proposed amendment will also be posted on the Universal Prekindergarten web site to facilitate a wide distribution. In addition, the proposed amendment will be disseminated to the Department's External Work Group on Universal Prekindergarten, which includes representatives from small businesses and local government.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment is necessary to conform Subpart 151-1 to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require school districts to:

- (1) adopt and implement curricula, aligned with the State learning standards, that ensures strong continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve;
- (2) provide early literacy and emergent reading instruction based on effective, evidence-based practices;
- (3) establish a process for assessing the developmental baseline and ongoing assessment of the development of language, cognitive and social skills in children;
- (4) use child assessment data to inform classroom instruction and monitor and track prekindergarten program effectiveness;
- (5) require school districts to monitor compliance by collaborating eligible agencies with all fiscal and program requirements and to assess student progress;
- (6) ensure that professional development based on the instructional needs of children is provided to all teachers and staff in district and agency settings;
- (7) develop procedures to ensure active engagement of parents and/or guardians in the education of their children; and
- (8) provide, either directly or through referral, support services to children and their families necessary to promote the child's participation in the program.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.5(b)(4)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(b)(5) allows two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

Each school district planning to receive an allocation to operate a universal prekindergarten program shall submit an application to the Department for approval, in a format and pursuant to a timeline prescribed by the Commissioner. The application shall include a written request for a variance where applicable.

Two or more school districts may submit a joint application to operate a joint program, in which case the application must also include a partnership agreement that specifies the roles and responsibilities of each school district for implementation and oversight of the program.

A final report, including such program and fiscal information as requested by the Department, shall be submitted within 30 days after the program ends.

School districts shall develop a competitive process, using a request for proposals, to determine which eligible agencies it will collaborate with to implement the program, including at minimum:

- (1) a description of the services to be provided;
- (2) a detailed narrative describing how the agency will meet the program's goals and objections;
- (3) a description of the agency's staff qualifications; and
- (4) a budget of proposed expenditures for services.

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

COMPLIANCE COSTS:

The proposed amendment is necessary to implement Education Law section 3602-e, as added by Chapter 57 of the Laws of 2007, and does not impose any additional costs beyond those inherent in the statute. The new requirements will result in additional costs to school districts and eligible agencies, as follows:

(1) Universal Prekindergarten is not a mandated program. For school districts opting to participate, the provisions that could be expected to have a cost impact are those associated with selection and implementation of curricula and assessments. These costs will vary depending on the curricula and assessment(s) selected, the familiarity of the district's staff with those products and the size of the program. However, the anticipated cost for school districts would be minimal.

(2) Eligible agencies contracting with school districts for the provision of the instructional program may be expected to initially experience some additional costs should they need to acquire additional materials and supplies necessary to implement the curricula and assessment(s) selected by the school district. These costs will be offset, in part if not entirely, by the fee for service paid by the school district.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establishing differing requirements or to exempt school districts and eligible agencies from coverage by the rule, except where such waiver authority is statutorily stated. Nevertheless, in establishing the uniform quality standards and other provisions necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, the Department has considered a variety of options and selecting those approaches that will achieve the goal of increased program quality while minimizing additional costs and compliance requirements upon school districts and eligible agencies. For example, the proposed rule provides a transition period for eligible agencies to comply with the minimum staff qualifications and establishes an alternative to teacher certification for teachers employed by eligible agencies. Because this amendment implements statutory provisions that are applicable to school districts across the State, it was not possible to provide for a lesser standard or an exemption for school districts in rural areas.

RURAL AREA PARTICIPATION:

The proposed amendment has been sent for review and comment to members of the Department's Rural Advisory Committee, which includes representatives from rural areas. The proposed amendment will also be posted on the Universal Prekindergarten web site to facilitate a wide distribution. Additionally, the proposed amendments will be disseminated to the Department's External Work Group on Universal Prekindergarten, which includes representatives from small businesses and local government located in rural areas.

Job Impact Statement

The proposed amendment is necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, relating to universal prekindergarten programs operated by public school districts, and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on October 31, 2007, the State Education Department received the following comments:

COMMENT:

Section 151-1.3(e) of the proposed regulation requires that Universal Prekindergarten (UPK) teachers possess a teaching certificate valid for service in the early childhood grades; or a teaching certificate for students with disabilities valid for service in the early childhood grades; or a bachelor's degree in early childhood or a related field with a written plan to obtain certification within five years. The commenter stated that in upstate communities the pool of applicants meeting such degree requirements is minimal. Because eligible agencies cannot match the salary and benefits paid by school districts, the turnover rate tends to be high when certified applicants are hired. The commenter recommended that the regulation be revised to make the teacher qualifications for UPK equivalent to the qualifications for voluntary registration of nursery schools and non-public kindergartens as set forth in Section 125.6 of the Regulations of the Commissioner of Education.

DEPARTMENT RESPONSE:

Education Law section 3602-e requires the Department to establish uniform quality standards that apply to all UPK classrooms whether they are operated by a public school or by an eligible agency. This statute also requires the Department to provide for a transition period for eligible agencies to come into compliance with these requirements. The alternative teacher qualifications set forth in the proposed regulations are consistent with the quality benchmarks established by the National Institute of Early Education Research (NIEER). While not identical, the proposed teacher qualifications are similar to those established for nursery schools and non-public kindergartens by Section 125.6 of the Regulations of the Commissioner. The slightly higher requirements for UPK teachers are necessary to comply with the statutory requirement that all UPK classes, regardless of setting, meet the uniform quality standards. No change to the proposed rule is required.

EMERGENCY RULE MAKING

Accreditation of Teacher Education Programs

I.D. No. EDU-48-07-00007-E

Filing No. 1390

Filing date: Dec. 18, 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 52.21(b)(2)(iv)(c)(3)(i) and (ii) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 215 (not subdivided); 305(1) and (2); 3001(2); and 3004(1)

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

Specific reasons underlying the finding of necessity: The proposed amendment is needed to enable certain teacher education programs to complete the accreditation process. Under existing regulations, certain teacher education programs are eligible for a deferral of the date by which they must be accredited. Currently, teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision, provided they had a site visit as part of their accreditation review by December 31, 2006, must complete the accreditation process and become accredited by an acceptable professional education accrediting association or the Board of Regents by December 31, 2007 in order to maintain their registration status. Teacher education programs denied accreditation during a limited period of time, January 1, 2005 through December 31, 2007, may request deferral of the date for accreditation, provided the programs submit a corrective action plan acceptable to the Department of Education.

The proposed amendment will extend by six months, until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. Accordingly, the proposed amendment will extend by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit teacher education programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral within 15 days from their receipt of written notice of the determination denying accreditation, provided the

programs submit a corrective action plan acceptable to the Department. The amendment will not change any other accreditation requirement.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be presented for regular adoption, after publication in the State Register and expiration of the 45-day public comment period, is the January 2008 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest effective date of the proposed amendment, if adopted at the January 14-15 meeting, would be February 7, 2007, the date a Notice of Adoption would be published in the State Register.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to prevent the de-registration of certain teacher education programs unable to meet the accreditation requirement by the current deadline date of December 31, 2007. By providing for a deferral of the accreditation deadline under the described conditions, the amendment will allow programs additional time to address accreditation deficiencies identified by their chosen accreditor which lead to the denial of accreditation, thereby limiting the disruption to students attending these programs, and helping to ensure improvement in program quality.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption/confirmation as a permanent rule at the January 14-15, 2007 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Accreditation of teacher education programs.

Purpose: To extend for six months, until June 30, 2008, the required time period for completion of the accreditation process by teacher education programs registered on or before Sept. 1, 2001 that are awaiting an accreditation decision following a site visit conducted on or before Dec. 31, 2006; and accordingly, to extend the period of eligibility in which certain teacher education programs, initially denied accreditation, may request from the department a deferral of the date by which they must be accredited.

Text of emergency rule: Pursuant to sections 207, 210, 215, 305, 3001, and 3004 of the Education Law.

Items (i) and (ii) of subclause (3) of clause (c) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education are amended, effective December 31, 2007, as follows:

(i) Deferral for programs awaiting accreditation decision. Programs registered on or before September 1, 2001 that are awaiting an accreditation decision from their chosen accreditor following an accreditation review which included a site visit conducted on or before December 31, 2006, shall meet the accreditation requirement in subclause (2) of this clause by [December 31, 2007] *June 30, 2008*.

(ii) Deferral for programs under corrective action plan. Programs registered on or before September 1, 2001 that have been denied accreditation between January 1, 2005 and [December 31, 2007] *June 30, 2008*, may request from the department a deferral of the date by which they must be accredited in accordance with the requirements of this item.

(A) Such programs denied accreditation between January 1, 2005 and July 12, 2006 must submit a written request to the department for the deferral of the date for accreditation by September 1, 2006. Such programs denied accreditation between July 13, 2006 and [December 31, 2007] *June 30, 2008* must submit to the department a written request for such deferral within 15 days of receiving written notice of the determination denying accreditation.

(B) Such programs may be granted by the department a deferral of the date by which they must be accredited, provided that the programs submit a corrective action plan that is acceptable to the department. Such corrective action plan must be submitted to the department within 60 days of the programs' submission of the request for the deferral of the date for accreditation. The corrective action plan must adequately address the deficiencies identified by the accreditor and establish an acceptable date by which the programs will be accredited based upon a plan to remedy such deficiencies. The department shall review the corrective action plan to determine whether to grant the deferral of the date for accreditation.

(C) Where the deferral of the date for accreditation is granted, the department shall determine the date by which the programs must be accredited. Such date shall be stated in the corrective action plan and shall not exceed three years from the date of the department's written notice to the programs of the determination to grant the deferral of the date for accreditation. During the period of the implementation of the corrective action plan, the programs shall demonstrate to the department that the programs are making adequate progress toward meeting the chosen ac-

creditor's standards. Any determination denying re-registration of the programs based upon the initial accreditation review shall be held in abeyance and the programs shall continue to be registered during the period of the review by the department of the programs' request for accreditation deferral and the implementation of an acceptable corrective action plan.

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. EDU-48-07-00007-P, Issue of November 28, 2007. The emergency rule will expire March 16, 2008.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents authority to register domestic and foreign institutions in terms of New York standards.

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the education supervision of the State and require reports from such schools.

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

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

Subdivision (2) of section 3001 of the Education Law requires as a qualification for teaching in the New York public schools the possession of a teacher's certificate under the authority of the Education Law.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by amending the accreditation requirements for certain programs leading to certification in teacher education ("teacher education programs"), which have not yet received an accreditation decision, to provide a necessary extension of the time in which these programs must complete the accreditation process. Accordingly, the proposed amendment also extends the period of eligibility for certain teacher education programs, initially denied accreditation, to request from the Department of Education a deferral of the date for accreditation, provided the programs submit a corrective action plan acceptable to the Department.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to enable certain teacher education programs to complete the accreditation process. Under existing regulations, certain teacher education programs are eligible for a deferral of the date by which they must be accredited. Currently, teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision, provided they had a site visit as part of their accreditation review by December 31, 2006, must complete the accreditation process and become accredited by an acceptable professional education accrediting association or the Board of Regents by December 31, 2007 in order to maintain registration status. Teacher education programs denied accreditation during a limited period of time, January 1, 2005 through December 31, 2007, may request a deferral of the date for accreditation, provided the programs submit a corrective action plan acceptable to the Department of Education.

The proposed amendment will extend by six months, until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the proposed amendment will extend by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit teacher education programs initially denied accreditation between

July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral within 15 days from their receipt of written notice of the determination denying accreditation, provided the programs submit a corrective action plan acceptable to the Department.

Currently, 111 institutions offer teacher education programs that must achieve accreditation by December 31, 2007. Of these, 100 institutions have achieved accreditation and 11 institutions are awaiting an accreditation decision after a site visit. The Department believes that it is necessary to provide these teacher education programs additional time to achieve accreditation, under limited conditions. Over the last five years, site visits have already occurred at all of the institutions that offer teacher education programs for which accreditation is required by December 31, 2006. Due to the challenges programs face in preparing for accreditation and the demands of scheduling so many site visits in this short period of time, accreditation site visits at all registered teacher education programs were completed in December, 2006. The large numbers of institutions requiring accreditation decisions in a short period of time has resulted in delays in the accreditation processes, especially those seeking accreditation through one of the national accrediting organizations. Consequently, it is likely that the accreditation process will not be completed by December 31, 2007 for some programs.

Accordingly, some of these programs initially denied accreditation will require additional time to resolve first-time accreditation deficiencies that resulted in an initial denial of accreditation. The amendment provides these programs more time to resolve these deficiencies under limited conditions. Thus, for programs denied accreditation during a limited period of time, January 1, 2005 through June 30, 2008, and more particularly, July 13, 2006 through June 30, 2008, the amendment permits a deferral of the date by which accreditation must be achieved, provided that the programs submit a corrective action plan acceptable to the State Education Department. The amendment will not change any other accreditation requirement.

The amendment is needed to provide the Department with regulatory flexibility to accommodate sound teacher education programs that demonstrate the ability to earn accreditation within the short term. Without the amendment, programs may be subject to de-registration for not meeting the accreditation requirement by December 31, 2007. The amendment is intended to provide needed flexibility to permit programs to address deficiencies, thereby limiting disruptions to students while helping to ensure improvements in program quality.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government, including the State Education Department. The amendment merely extends the required time period for certain teacher education programs to achieve accreditation. The Department will use existing personnel and resources to process requests for deferral of the accreditation date and to review corrective action plans.

(b) Costs to local government: The proposed amendment will not impose any additional costs upon local government.

(c) Costs to private regulated parties: The proposed amendment merely extends by six months, until June 30, 2008, the date by which accreditation must be achieved by certain teacher education programs awaiting an accreditation decision. The amendment will not impose any additional costs on regulated parties.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State government," the amendment will not impose any additional costs on State government, including the State Education Department.

5. PAPERWORK:

The proposed amendment merely extends by six months, until June 30, 2008, the date by which accreditation must be achieved by certain teacher education programs awaiting an accreditation decision. Programs initially denied accreditation and seeking deferral of the date for accreditation will continue to have to apply to the State Education Department for such deferral and submit corrective action plans explaining how they will remedy the deficiencies identified by their chosen accreditor. The amendment will not impose any additional paperwork requirements, beyond those already required pursuant to existing regulations.

6. LOCAL GOVERNMENT MANDATES:

The amendment concerns the accreditation requirements for certain teacher education programs. The proposed amendment does not impose any program, service, duty or responsibility upon local governments.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable significant alternatives to the proposed amendment, and none were considered. Without the amendment, programs that have not received accreditation because of a back log in the accreditation process, may be subject to de-registration for not meeting the accreditation requirement by December 31, 2007.

9. FEDERAL STANDARDS:

There are no applicable standards of the Federal government establishing accreditation requirements for teacher education programs.

10. COMPLIANCE SCHEDULE:

The amendment would be effective on its stated effective date. The amendment provides mandate relief by deferring the date by which eligible teacher education programs must be accredited. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment extends until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the proposed amendment extends by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral, provided the programs submit a corrective action plan acceptable to the Department.

The amendment does not change any other accreditation requirement. It does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The amendment provides mandate relief to colleges and universities that offer teacher education programs by authorizing the deferral of the date by which their teacher education programs must achieve accreditation in order to maintain their registration status. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all higher education institutions that offer programs leading to certification in teacher education ("teacher education programs") registered prior to September 1, 2001 that are awaiting an accreditation decision, provided they had a site visit as part of their accreditation review by December 31, 2006, including those located in the State's 44 rural counties and 71 towns in urban counties with a population density of 150 per square mile or less. The Department estimates that eight to 11 institutions will not complete the accreditation process by the current deadline date of December 31, 2007 and will require additional deferral of the date for accreditation, including one that is located in a rural area of New York State.

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

The purpose of the proposed amendment is to enable certain teacher education programs to complete the accreditation process. Under existing regulations, certain teacher education programs are eligible for a deferral of the date by which they must be accredited. Currently, teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision, provided they had a site visit as part of their accreditation review by December 31, 2006, must complete the accreditation process and become accredited by an acceptable professional education accrediting association or the Board of Regents by December 31, 2007 in order to maintain their registration status. Teacher education programs denied accreditation during a limited period of time, January 1, 2005 through December 31, 2007, may request deferral of the date for accreditation, provided the programs submit a corrective action plan acceptable to the Department of Education.

The proposed amendment will extend by six months, until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. Accordingly, the proposed amendment will extend by six months the period of eligibility in

which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit teacher education programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral within 15 days from their receipt of written notice of the determination denying accreditation, provided the programs submit a corrective action plan acceptable to the Department.

The amendment will not change any other accreditation requirement, i.e.; programs denied accreditation must continue to submit their correction action plans to the Department within 60 days of the programs' submission of the deferral request. The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply, and will not impose any additional recordkeeping requirements, beyond those already required pursuant to existing regulations.

3. COSTS:

The proposed amendment merely extends the required period of time for certain teacher education programs, which have not yet received an accreditation decision, to achieve accreditation. The amendment does not change any other accreditation requirement. Accordingly, the amendment does not impose any additional costs upon the teacher education programs.

4. MINIMIZING ADVERSE IMPACT:

The amendment provides mandate relief by providing a one-time process to defer the date by which a teacher education program must achieve accreditation. Because of the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

During the development of the proposed amendment, the content of the proposed amendment was discussed with the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including secondary and post-secondary faculty and administrators. The same discussion occurred with the Board of Regents, which includes representatives from all New York State regions, including rural areas of New York State. In addition, the proposed amendment has been sent to all colleges and universities in New York State that offer teacher education programs leading to certification in the classroom teaching service, including those located in rural areas of New York State.

Job Impact Statement

The purpose of the proposed amendment is to extend by six months, until June 30, 2008, the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the proposed amendment extends by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. Specifically, the amendment will permit teacher education programs initially denied accreditation between July 13, 2006 and June 30, 2008 to submit to the Department of Education a request for such deferral within 15 days from their receipt of written notice of the determination denying accreditation, provided the programs submit a corrective action plan acceptable to the Department.

The amendment provides mandate relief to colleges and universities that offer teacher education programs by authorizing the deferral of the date by which their teacher education programs must achieve accreditation in order to continue to be registered by the Department. The amendment will not change any other accreditation requirement. The amendment will not affect jobs or employment opportunities in these teacher education programs or in any field. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

NOTICE OF ADOPTION

Universal Prekindergarten Programs

I.D. No. EDU-24-07-00027-A

Filing No. 1393

Filing date: Dec. 18, 2007

Effective date: Jan. 3, 2008

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

Action taken: Repeal of Subpart 151-1 and addition of new Subpart 151-1 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3602-e(1), (2) and (5)-(16), and L. 2007, ch. 57, section 19

Subject: Universal prekindergarten programs.

Purpose: To conform Subpart 151-1 of the commissioner's regulations to Education Law section 3602-e, as amended by chapter 57 of the Laws of 2007, by establishing uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive process, and facility requirements.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. EDU-24-07-00027-EP, Issue of June 13, 2007.

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

Revised rule making(s) were previously published in the State Register on September 12, 2007 and October 31, 2007.

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

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on October 31, 2007, the State Education Department received the following comments:

COMMENT:

Section 151-1.3(e) of the proposed regulation requires that Universal Prekindergarten (UPK) teachers possess a teaching certificate valid for service in the early childhood grades; or a teaching certificate for students with disabilities valid for service in the early childhood grades; or a bachelor's degree in early childhood or a related field with a written plan to obtain certification within five years. The commenter stated that in upstate communities the pool of applicants meeting such degree requirements is minimal. Because eligible agencies cannot match the salary and benefits paid by school districts, the turnover rate tends to be high when certified applicants are hired. The commenter recommended that the regulation be revised to make the teacher qualifications for UPK equivalent to the qualifications for voluntary registration of nursery schools and non-public kindergartens as set forth in Section 125.6 of the Regulations of the Commissioner of Education.

DEPARTMENT RESPONSE:

Education Law section 3602-e requires the Department to establish uniform quality standards that apply to all UPK classrooms whether they are operated by a public school or by an eligible agency. This statute also requires the Department to provide for a transition period for eligible agencies to come into compliance with these requirements. The alternative teacher qualifications set forth in the proposed regulations are consistent with the quality benchmarks established by the National Institute of Early Education Research (NIEER). While not identical, the proposed teacher qualifications are similar to those established for nursery schools and non-public kindergartens by Section 125.6 of the Regulations of the Commissioner. The slightly higher requirements for UPK teachers are necessary to comply with the statutory requirement that all UPK classes, regardless of setting, meet the uniform quality standards. No change to the proposed rule is required.

NOTICE OF ADOPTION

Excelsior Scholars Program

I.D. No. EDU-33-07-00012-A
Filing No. 1391
Filing date: Dec. 18, 2007
Effective date: Jan. 3, 2008

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

Action taken: Addition of sections 100.14 and 100.15 to Title 8 NYCRR.
Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2) and sections 3641-a(1), (2) and (3) and 3641-b (not subdivided), as added by L. 2007, ch. 57, part B, section 39

Subject: Excelsior Scholars Program and grants for summer institutes for mathematics and science teachers.

Purpose: To establish criteria for the award of grants for the Excelsior Scholars Program pursuant to Education Law section 3641-a and grants for summer institutes for mathematics and science teachers pursuant to Education Law section 3641-b.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-07-00012-P, Issue of August 15, 2007.

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

Revised rule making(s) were previously published in the State Register on October 24, 2007.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Disaster Planning

I.D. No. EDU-39-07-00021-A
Filing No. 1389
Filing date: Dec. 18, 2007
Effective date: Jan. 3, 2008

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

Action taken: Addition of section 50.1(w); amendment of section 52.2(c)(4); and addition of section 145-2.1(g) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 202(1), 207 (not subdivided), 210 (not subdivided), 215 (not subdivided) and 305(1), (2) and (20)

Subject: Disaster planning.

Purpose: To permit an institution to provide a statement of academic standards establishing equivalency of instruction and study in the temporary closure of an institution as a result of a disaster.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-39-07-00021-P, Issue of September 26, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Local Government Records Management

I.D. No. EDU-39-07-00022-A
Filing No. 1394
Filing date: Dec. 18, 2007
Effective date: Jan. 3, 2008

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

Action taken: Amendment of sections 185.1, 185.2, 185.3, 185.5, 185.6, 185.7, 185.8, 185.9 and 185.10 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided); and Arts and Cultural Affairs Law, section 57.23(3)

Subject: Local government records management.

Purpose: To revise and clarify various provisions of 8 NYCRR Part 185, especially those pertaining to replacing original records with microforms or digital images, the retention and preservation of electronic records, and the use of alternative records disposition schedules.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-39-07-00022-P, Issue of September 26, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

**EMERGENCY
 RULE MAKING**

Recreational Harvest and Possession of Summer Flounder

I.D. No. ENV-40-07-00005-E
Filing No. 1378
Filing date: Dec. 14, 2007
Effective date: Dec. 14, 2007

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

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

Statutory authority: Environmental Conservation Law, section 13-0105 and 13-0340-b

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

Specific reasons underlying the finding of necessity: The Department is re-adopting an amendment to 6 NYCRR Part 40 which implemented a closure of the recreational summer flounder season, effective September 17, 2007. These regulations are necessary in order for New York to maintain compliance with the Fishery Management Plan (FMP) for Summer Flounder as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

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

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

ECL Sections 13-0105 and 13-0340-b, which authorize the adoption of regulations for the management of summer flounder, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Under the FMP for summer flounder, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest if the state's regulations remained unchanged and harvest patterns and rates remained the same as the previous year. ASMFC reviews each state's regulations and determines if they are compliant with the FMP. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding its assigned quota. Failure by a state to adopt, in a timely manner, revised regulations may result in a determination of non-compliance by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder in that state, which could result in significant adverse impacts to the state's economy.

New York's assigned recreational harvest limit for 2007 is 430,262 fish. Under existing regulations, which were adopted on April 24, 2007, New York's recreational harvest of summer flounder for 2007 was projected to be within the assigned harvest limit. Data provided by the National Marine Fisheries Service from a coast-wide angler survey estimated that New York marine anglers had harvested in excess of 357,379 fish, or 83% of the State's quota, by the end of June 2007. Having considered data collected in previous years, Department staff believe that it is highly probable that the recreational fluke harvest in New York has by now exceeded New York's 2007 harvest limit, perhaps by a wide margin. The promulgation of this regulation on an emergency basis is necessary in order for the Department to immediately end the current harvest of summer flounder in New York for 2007 and maintain compliance with the FMP. It is also necessary in order to prevent more stringent management measures for fluke in 2008 based on exceeding 2007's harvest limit.

Subject: Recreational harvest and possession of summer flounder.

Purpose: To control the recreational harvest and possession of summer flounder consistent with fisheries management plans.

Text of emergency rule: Section 40.1(f) is amended as follows:

40.1(f) Table A - Recreational Fishing:

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	Licensed Party/ Charter Boat anglers	2
		28" TL	
		All other anglers	1
		28" to 40" TL	
		>40" TL	1
		(Total Length)	
		*	
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	19" TL	No limit
Atlantic cod	All year	22" TL	No limit
Summer flounder	[All year] <i>None (closed as of September 17, 2007)</i>	[19.5"]	[4]
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	17" TL	No limit
Weakfish	All year	11" tail length # 16" TL 10" Fillet length + 12" Dressed length**	6
Bluefish	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	15, no more than 10 of which shall be less than 12" TL.
Winter Flounder	April 1 - May 30	12" TL	10
Scup (porgy)	June 1 - Aug. 31	10.5" TL	25
Licensed Party/ Charter			
Boat anglers ****	Sept. 1 - Oct. 31	10.5" TL	60
Scup (porgy)	June 1 - Oct. 31	10.5" TL	25
All other anglers			
Black Sea Bass	All year	12" TL	25

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ENV-40-07-00005-EP, Issue of October 3, 2007. The emergency rule will expire February 11, 2008.

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

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

3. Needs and benefits:

The Department is adopting an amendment to 6 NYCRR Part 40 which will implement a closure of the recreational summer flounder season, effective September 17, 2007. These regulations are necessary in order for New York to maintain compliance with the Fishery Management Plan (FMP) for Summer Flounder as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

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

long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

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

ECL Sections 13-0105 and 13-0340-b, which authorize the adoption of regulations for the management of summer flounder, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Under the FMP for summer flounder, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest if the state's regulations remained unchanged and harvest patterns and rates remained the same as the previous year. ASMFC reviews each state's regulations and determines if they are compliant with the FMP. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding its assigned quota. Failure by a state to adopt, in a timely manner, revised regulations may result in a determination of non-compliance by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder in that state, which could result in significant adverse impacts to the state's economy.

New York's assigned recreational harvest limit for 2007 is 430,262 fish. Under existing regulations, which were adopted on April 24, 2007, New York's recreational harvest of summer flounder for 2007 was projected to be within the assigned harvest limit. Data provided by the National Marine Fisheries Service from a coast-wide angler survey estimated that New York marine anglers had harvested in excess of 357,379 fish, or 83% of the State's quota, by the end of June 2007. Having considered data collected in previous years, Department staff believe that it is highly probable that the recreational fluke harvest in New York has by now exceeded New York's 2007 harvest limit, perhaps by a wide margin. The promulgation of this regulation on an emergency basis is necessary in order for the Department to immediately end the current harvest of summer flounder in New York for 2007 and maintain compliance with the FMP. It is also necessary in order to prevent more stringent management measures for fluke in 2008 based on exceeding 2007's harvest limit.

4. Costs:

(a) Cost to State government:

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

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

Certain regulated parties (party/charter vessels, bait and tackle shops) will experience some adverse economic effects due to closure of the summer flounder season. Many charter operations have already booked fishing trips for summer flounder into September and October and have paid for advertisements. Most bait and tackle shops have ordered and purchased summer flounder bait, and bait dealers have done the same. There will be some economic loss to these businesses.

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

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

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

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

(1) One alternative that was considered was to close the fishery September 4th, which would have prevented even more over-harvest than closing on September 17th. However, the potential economic consequences of such a short-notice shutdown for one of the most important recreational fisheries in New York are believed to be particularly damaging to the industry, resulting in significant economic loss to bait and tackle shops, party and charter boat businesses and the supporting local economy. This situation was immediately brought to the attention of the Commissioner when this alternative was announced as the choice. The resultant outcry forced a rejection of this alternative.

(2) Another alternative considered and rejected was to wait until September 30th to close the recreational fishery. This was rejected in favor of limiting any overharvest for 2007, thus protecting the fishery stock, and also limiting any negative consequences to New York's harvest limit for 2008. In addition, if open through September 30, New York's fluke season would be two weeks longer than any neighboring state. An influx of these fishermen would increase fishing pressure in New York and add to the over-harvest of New York's quota.

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

The "no action" alternative would leave current regulations in place and defer the consequences of over-harvest until next fishing season. This option would, however, put New York in a position to further exceed the 2007 harvest limit and over-harvest by a wide margin, which would be contrary to the objectives of the fishery management plan and forcing New York into even more restrictive management measures in 2008. For these reasons, this alternative was rejected.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs.

10. Compliance schedule:

The emergency regulations will take effect immediately upon filing with the Department of State, and compliance will be required as of September 17, 2007. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via the Department's website.

Regulatory Flexibility Analysis

1. Effect of the regulations:

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

In 2006, ASMFC adopted annual quota changes and recreational harvest projections for summer flounder (fluke) for the 2007 fishing season. New York's assigned recreational harvest limit for 2007 is 430,262 fish. Under existing regulations which were adopted on April 24, 2007, New York's recreational harvest of summer flounder for 2007 was projected to be within the assigned harvest limit. Data provided by the National Marine Fisheries Service from a coast-wide angler survey estimated that New York marine anglers had harvested 357,379 fish, or 83% of the State's quota. Based upon data from previous years, it is highly probable that NY's anglers have by now exceeded the harvest limit, perhaps by a wide margin. The result is that we are currently over-fishing on summer flounder. The Department has chosen to amend its fluke regulations to comply with the requirements of the FMP. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

There were 503 licensed party/charter vessels operating in New York during 2006. In 2006, there were also retail and wholesale marine bait and tackle shop businesses operating in New York; however, the Department does not have a record of the absolute number. The Department consulted the Marine Resources Advisory Council regarding the proposed action. The Board voted on the Department's proposed action, and a majority voted to support the Department's decision to close the fishery in order to comply with the FMP.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or

tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the Department to maintain compliance with the FMP for summer flounder, immediately end the current over-fishing, and prevent more stringent management measures for 2008. Since these regulatory amendments are consistent with federal and interstate fishery management plans, the Department anticipates limited or no adverse impacts.

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

6. Small business and local government participation:

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

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

7. Economic and technological feasibility:

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

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

Rural Area Flexibility Analysis

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

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

Job Impact Statement

The Department of Environmental Conservation (Department) has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities as per SAPA § 201-A. Therefore, a job impact statement is not required.

The promulgation of this regulation is necessary in order for the Department to stop over-fishing of summer flounder relative to New York's allowable harvest limit for 2007 and to avoid the more stringent management measures that would be required in the summer flounder recreational fishery if it were allowed to continue, and the economic hardship that would be associated with such management measures.

There were 503 licensed party/charter vessels operating in New York during 2006. In 2006, there were also retail and wholesale marine bait and tackle shop businesses operating in New York; however, the Department does not have a record of the absolute number. Many currently licensed party and charter boat owners and operators hire seasonal employees during the fishing season, the majority of which occurs from May through October, with a peak in the summer months. These businesses also make

purchases of bait and tackle and take out advertisements in local media. A longer fishing season provides more opportunity to fish for summer flounder and may, thereby, result in more angler trips made than in a shorter season. Conversely, there may be an adverse affect on the number of fishing trips during the current fishing season as a result of the closure on September 17, 2007. The closure of the summer flounder fishery may, therefore, result in an early end to seasonal employment for an unknown number of industry employees. In addition, there is the potential for isolated cases of business losses severe enough to jeopardize individual business operations.

The 2007 summer flounder fishing season has been open since April 24th. The proposed closure is for September 17th, which means the season will have been open for 147 days. The early closure of the fishery means the loss of 44 fishing days based upon general fishing activity for summer flounder through October. For comparison, the summer flounder season in 2004 was open May 15th through September 6th, in 2005 April 29th through October 31st, and in 2006 May 6th through September 12th. In addition, over-harvest of New York's 2007 summer flounder recreational harvest limit has occurred and is on-going, so the industry has already taken the maximum benefit available from this fishery. Seasonal employment beyond the time period in which New York's limit was taken could not have been relied upon reasonably. Therefore, the premature closure of this fishery is seen to have a limited impact on seasonal employment, with no opportunities for new employment lost as a result. Further, the Department anticipates that there will be an open season for summer flounder in 2008, but the duration of that season is unknown at this time. The closure is, therefore, a temporary condition which will have a limited impact on future seasonal employment.

The Department consulted the Marine Resources Advisory Council regarding the proposed action. The Board voted on the Department's proposed action, and a majority voted to support the Department's decision to close the fishery in order to comply with the FMP.

In the long term, the maintenance of sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat owners and operators. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the summer flounder resource is essential to the survival of the party and charter boat operations and bait and tackle businesses that support in these fisheries. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest and to continue to rebuild or maintain them for future utilization.

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

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rate Enhancement/Pay for Performance

I.D. No. HLT-01-08-00021-P

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

Proposed action: Addition of section 86-2.38 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(22)

Subject: Rate enhancement/pay for performance.

Purpose: To establish a payment methodology for rate enhancements as required by Public Health Law 2808(22).

Text of proposed rule: A new section 86-2.38 is hereby added, to read as follows:

86-2.38 Nursing Home incentive payment

(a) The commissioner shall make rate adjustments, subject to the availability of funds therefore, to certain residential health care facilities

who demonstrate to the satisfaction of the commissioner that they can meet or exceed defined quality measures.

(b) Initial awards shall be based on a residential health care facility's performance for pressure ulcer quality of care for chronic care residents.

(c) The commissioner shall make two sets of awards as follows:

(1) An award shall be made for the best performers for the evaluation period;

(2) An award shall be made to residential health care facilities with the best improvement in pressure ulcer care between a base and evaluation period except that facilities in the bottom quarter percentile of all eligible residential health care facilities for this evaluation period shall not be eligible for such an award if, even after their improvement in pressure ulcer care, they still remain in the bottom quarter percentile of all eligible residential health care facilities; and

(3) Residential health care facilities that qualify are eligible to receive an award in both categories of awards.

(d)(1) The evaluation period for the award for best performers shall be January 1, 2007 through December 31, 2007.

(2) The base period for the award for best improvement shall be July 1, 2006 through June 30, 2007 which shall be compared to the period July 1, 2007 through June 30, 2008.

(e) The following factors shall be considered by the commissioner in making awards pursuant to this section:

(1) The quality measure of pressure ulcer shall be risk adjusted using such patient health factors to include but not be limited to, coma, malnutrition, diseases and conditions related to pressure ulcer, low body mass index, and plegia (paraplegia or hemiplegia);

(2) Pressure ulcer rates shall be considered only for chronic care residential health care facility residents;

(3) In order to be eligible to be considered for a rate enhancement, a residential health care facility must have averaged more than one prevented pressure ulcer per quarter of the evaluation period identified in subdivision (d) of this section as calculated by comparing the actual number of residents with a pressure ulcer to the expected number of residents with a pressure ulcer based on the facility's risk adjusted pressure ulcer rate developed pursuant to this subdivision; and

(4) Any residential health care facility receiving a written deficiency for substandard quality of care, as defined in federal regulation 42 C.F.R. § 488.301, during the evaluation periods contained in this section shall be excluded from receiving an award under this section.

(f) Rate adjustments made pursuant to this section for residential health care facilities receiving monetary awards shall be made based on the residential health care facility's percent of patient days of care attributable to patients eligible for medical assistance pursuant to title eleven of article five of the social services law.

(g) Residential health care facilities chosen to receive rate enhancements pursuant to this section shall, prior to the rate enhancement, inform the commissioner in writing as to their proposed use of the additional monies to further improve quality and care of patients in the residential health care facility.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority by which the Commissioner promulgates the subject regulations is contained in section 2808(22) of the Public Health Law, which requires the Commissioner to adopt rules and regulations for residential health care facility reimbursement rates that incorporate payment incentives related to certain quality of care measures.

Legislative Objectives:

The legislative intent of Article 28 of the Public Health Law is to provide for the protection and promotion of the health of the inhabitants of the State of New York by delivering high quality nursing home services in a safe and efficient manner at a reasonable cost. Section 2808(22) of the Public Health Law requires the Commissioner of Health to adopt rules and regulations that incorporate rate enhancements for nursing homes that meet certain quality measures.

Needs and Benefits:

In accordance with Public Health Law § 2808(22), the proposed amendment is needed to establish rules and regulations for a rate enhancement for improved performance in long term residential patient care. The initial round of enhancements will be based on a nursing home's risk adjusted pressure ulcer measure for chronic care residents. This quality measure produces a ratio that compares the actual rate to the expected rate of pressure ulcers at a facility.

Rate enhancements will be given to Best Performers and Best Improvers among eligible nursing homes. An eligible nursing home is one that has not been cited for substandard quality of care during the relevant period. A nursing home can be selected in both categories.

The Best Performers will consist of the top four percent of all eligible nursing homes rank ordered for the risk adjusted pressure ulcer measure. Nursing homes will be ranked according to the four quarter average score for the period January 1, 2007 to December 31, 2007.

The Best Improvers will consist of the top four percent of all eligible nursing homes showing improvement in the risk adjusted pressure ulcer measure from the base period to the evaluation period. A facility will not be eligible for a Best Improver award if its average pressure ulcer ratio for the evaluation period remains in the bottom 25th percentile of all eligible nursing homes. The base period will be July 1, 2006 to June 30, 2007. The evaluation period will be July 1, 2007 to June 30, 2008.

COSTS:

Costs to State Government:

A State appropriation has been made in the amount of \$1.5 million for the 2007 State fiscal year. The State will seek approval from the Centers for Medicare and Medicaid Services to amend its Medicaid State Plan to obtain federal financial participation in the costs of providing these rate enhancements.

Costs of Local Government:

The additional cost to local government will be the local share of the Medicaid costs.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The proposed regulation allows a rate enhancement if a facility meets certain quality measures.

Costs to the Department of Health:

There will be no additional costs to the Department of Health.

Local Government Mandates:

This proposal poses no program, service, duty or other responsibility upon any city, town, village, school, fire district or other special district.

Paperwork:

Providers receiving an award will be required to report to the Department its proposed use of the monies.

Duplication:

These regulations do not duplicate any other existing State or Federal regulations.

Alternatives:

To determine an appropriate quality measure or measures on which to base an award, the Department formed a workgroup consisting of representatives from a number of individual nursing homes, as well as from various organizations representing nursing homes and nursing home residents. Among the organizations represented in the workgroup were: Coalition of Institutionalized Aged & Disabled; Continuing Care Leadership Coalition; Greater New York Health Care Facilities Association; Healthcare Association of New York State; Long Term Care Community Coalition; New York Association of Homes & Services for the Aging; and New York State Health Facilities Association.

The workgroup looked at the eighteen separate performance measures established by the federal Centers for Medicare and Medicaid Services to measure quality of care in nursing homes. Three of these measures related to pressure ulcers. The workgroup determined the incidence of pressure ulcers to be a good indicator of the overall quality of care in a facility, and that New York State nursing homes most needed improvement with respect to this quality measure. For these reasons, the workgroup chose pressure ulcers as the initial quality performance measure for awarding rate enhancements pursuant to Public Health Law section 2808(22).

As an alternative, the workgroup considered evaluating nursing homes on a combination of different types of performance measures. However, the workgroup concluded that this approach would not necessarily yield more reliable results and would pose certain methodological difficulties. Therefore the workgroup ultimately concluded that the incidence of pressure ulcers would provide the best yardstick for measuring overall improvement in quality of care.

Federal Standards:

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

Compliance Schedule:

The proposed rule establishes rate enhancements for facilities that meet certain quality standards. There is no period of time necessary for regulated parties to achieve compliance.

Contact Person:

Katherine E. Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 FAX
REGSQNA@health.state.ny.us

Comments submitted to Department personnel other than this contact person may not be included in any assessment of public comment issued for this regulation.

Consolidated Regulatory Flexibility Analysis

No Consolidated Analysis is required. The proposal will not impose an adverse economic impact on small businesses or local governments and will not impose additional reporting, recordkeeping or other compliance requirements. The proposal simply increases Medicaid reimbursement to nursing homes that meet or exceed certain performance measures as defined in Department regulations.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required. The proposal will not impose an adverse economic impact on rural areas nor impose additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal simply increases Medicaid reimbursement to nursing homes that meet or exceed certain performance measures defined in Department regulations.

Job Impact Statement

A Job Impact Statement is not attached because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposal simply increases Medicaid reimbursement to nursing homes that meet or exceed certain performance measures as defined in Department regulations.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensed Home Care Services Agency Regulations

I.D. No. HLT-01-08-00022-P

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

Proposed action: Amendment of sections 763.12, 766.10 and 766.12 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3612(3) and (6)

Licensed home care services agency regulations for cost report and administrative expense requirements.

Purpose: To submit annual cost reports and comply with the annual administrative and general cost requirements applied to certificate home health agencies.

Text of proposed rule: A new subdivision (c) is added to Section 763.12 to read as follows:

(c) *A certified home health agency shall provide to a sub-contracting licensed home care services agency all information to allow such licensed home care services agency to meet the financial and statistical reporting requirements of section 766.12(c)(1) of this Part.*

A new subdivision (h) is added to Section 766.10 to read as follows:

(h) *If a licensed home care services agency contracts with a certified home health agency, the administrative and general costs of such licensed home care services agency shall not exceed the annual statewide average administrative and general limitation applied to certified home health agencies in accordance with subdivision (7) of section 3614 of the public health law.*

Paragraph (1) of subdivision (c) of Section 766.12 is amended as follows:

(1) statistical summaries of all health care services, *including the type, frequency and reimbursement for services provided, including reim-*

bursement from federal and state governmental agencies, on forms provided by the department;

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

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

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

Regulatory Impact Statement

Statutory Authority:

Chapter 606 of the Laws of 2003 amended subdivisions (3) and (6) of Section 3612 of the Public Health Law to require the Commissioner of Health to adopt rules and regulations to require Certified Home Health Agency (CHHA) and Licensed Home Care Services Agencies (LHCSA) to meet certain reporting standards, and for LHCSAs to comply with the statutory administrative and general cost limitation applied to CHHAs.

Legislative Objectives:

To obtain information from and to apply standards to the administrative costs of LHCSAs that contract with CHHAs to provide Medicaid covered services.

Needs and Benefits:

The regulation is designed to exercise some control and financial oversight of the Medicaid services that are reimbursed to CHHAs but provided by LHCSAs under their private contract with a CHHA. Without adequate reporting requirements, it has been difficult to document that public funds received by LHCSAs are being used for their intended purposes.

While LHCSAs are not a direct biller of Medicaid, they are largely an ultimate recipient of Medicaid dollars. For all other Medicaid-reimbursable providers in New York state, the Department has the authority to request and receive information pertaining to revenue. Extending this reporting authority to LHCSAs is wholly within the purview of the Department.

COSTS:

Costs to State Government:

There are no additional costs anticipated to State Government.

Costs of Local Government:

There are no additional costs anticipated to Local Government.

Costs to Private Regulated Parties:

CHHAs currently submit an annual financial and statistical cost report to the Department for Medicaid reimbursement and LHCSAs currently submit an Annual Statistical Report to the Department. In order to minimize costs to LHCSAs and CHHAs as a result of this regulation, the Department will amend these existing reports to obtain the information necessary to comply with PHL Section 3612(3) in the aggregate rather than on a contract-by-contract basis.

However, CHHAs will now be required as part of their contracted arrangement with a LHCSA to provide information necessary for LHCSAs to fulfill their cost reporting requirements. This may have cost implications for those CHHAs who do not currently maintain and provide such data, yet the new statutory requirement necessitates the provision of such data by CHHAs. Approximately 274 LHCSAs (encompassing 445 sites) are contracting with as many as 114 CHHAs for Medicaid reimbursement.

The provision within this regulation requiring LHCSAs to comply with the statutory administrative and general cost limitation applied to CHHAs may impose a financial burden on certain LHCSAs, yet is mandated by the new statutory requirements of PHL Section 3612(6).

Costs to the Department of Health:

The Department may need to make minor modifications to the existing LHCSA report, but no additional costs are anticipated.

Local Government Mandates:

There are no Local Government Mandates as a result of the proposed regulation.

Paperwork:

As noted above, the proposed regulations may create some additional paperwork requirements for the regulated CHHAs and LHCSAs, but is dictated by PHL Sections 3612(3) and 3612(6).

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

No significant alternatives were possible due to express statutory mandates. As a result of enactment of PHL Sections 3612(3) and 3612(6), the

Department is directed to require specific reporting from CHHAs and LHCSAs and to establish a cap of administrative and general services for LHCSAs equal to the cap applied to CHHAs in accordance with PHL Section 3714(7). Based on comments received from industry representatives, amendments were made to the proposed rulemaking in order to minimize adverse impacts.

Federal Standards:

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

Compliance Schedule:

In accordance with the statutory requirements, the regulated parties must achieve compliance commencing with the submission of the 2007 cost report.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purposes of this Regulatory Flexibility Analysis, small businesses are considered any home care agency within New York state which is independently owned and operated, and employs 100 individuals or less. Based on the data currently submitted to the Department by LHCSAs, approximately 47% (128) of the affected LHCSAs are small business entities. Of the 114 community-based certified home health agencies (CHHA), 75% (87) are considered by the Department to be small business entities.

Compliance Requirements:

The small business CHHAs and LHCSAs are currently submitting reports that will comply with the regulations. As a result of the application of a cap on their administrative and general costs and the limitations for a smaller business to defray such fixed costs, it is likely that small business LHCSAs will now be more limited in their ability to provide the required data. The small business CHHAs will now be required to maintain and provide, to any such contracting LHCSA, the data necessary for such LHCSA to comply with the regulatory reporting requirements.

Professional Services:

The small business CHHAs may need to obtain additional computer services if their current systems are not sufficient to produce the required data to their contracting LHCSAs for compliance with reporting requirements.

Compliance Costs:

In regard to initial costs, all the effected small businesses are currently required by the Department to maintain certain records, in accordance with Part 700 of Title 10. Therefore, these entities should have the existing computer hardware to meet their compliance requirements.

Economic and Technological Feasibility:

All the affected small businesses should have no technical barriers to achieving compliance. The smaller LHCSAs, with limited utilization to defray existing fixed administrative costs, may experience some difficulty in complying with the administrative cost requirements, while complying with a cap on administrative and general costs.

Minimizing Adverse Impact:

Since the regulation had to be drafted in accordance with the statutory amendments to Section 3612 of the Public Health Law, some adverse impact was unavoidable. However, compliance schedules have been adjusted to accommodate the regulated parties as appropriate.

Opportunity for Small Business and Local Government Participation:

Small businesses and local governments were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council, as well as, the agenda of the State Hospital Review and Planning Council Code Committee meeting. Those agendas are mailed to members of the respective committees, the New York State Legislature and representatives of the home care associations among others. The associations are member organizations, which represent the needs and concerns of providers across New York State. The amendment was described at meetings of the Fiscal Policy Committee prior to filing of the notice of proposed rulemaking.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Based on the data currently submitted to the Department by LHCSAs, we can estimate that of the affected LHCSAs approximately 117 sites (26%) are located in rural entities. Of the 114 community-based certified home health agencies (CHHA), 69% (79) are considered by the Department to be rural.

Compliance Requirements:

The small business CHHA's and LHCSAs currently submit reports that provide the data to comply with the regulations.

Rural LHCSAs are more likely to be small business entities and, as a result of the application of a cap on their administrative and general costs and their limitations in defraying such fixed costs, it is likely that rural LHCSAs will now be more limited in their ability to provide the required data.

The rural CHHAs will now be required to maintain and provide, to any such contracting LHCSA, the data necessary for such LHCSA to comply with the regulatory reporting requirements.

Professional Services:

The rural CHHAs may need to obtain additional computer services if their current systems are not sufficient to produce the required data to their contracting LHCSAs for compliance with reporting requirements.

Compliance Costs:

In regard to initial costs, all the effected small business are currently required by the Department to maintain certain records, in accordance with Part 700 of Title 10. Therefore, these entities are likely to currently have the existing computer hardware to meet their compliance requirements.

Minimizing Adverse Impact:

It is required that the rule be designed in accordance with the statutory mandates to Section 3612 of the Public Health Law. Based on comments received from industry representatives, amendments were made to the proposed rulemaking in order to minimize adverse impacts.

Opportunity for Rural Area Participation:

Rural areas were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council meeting, as well as, the agenda of the State Hospital Review and Planning Council Codes Committee meeting. Those agendas are mailed to members of the respective committees, the New York State Legislature and representatives of the home care associations among others. The associations are member organizations, which represent the needs and concerns of providers across New York State including rural areas. The amendment was described at meetings of the Fiscal Policy Committee prior to filing of the notice of proposed rulemaking.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

Insurance Department

EMERGENCY RULE MAKING

Establishment of the Industry Standard Rate

I.D. No. INS-01-08-00017-E

Filing No. 1377

Filing date: Dec. 12, 2007

Effective date: Dec. 12, 2007

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

Action taken: Amendment of Part 151 (Insurance Regulation 119) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; Workers' Compensation Law, section 27

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

Specific reasons underlying the finding of necessity: Chapter 6 of the Laws of 2007 established comprehensive reforms to New York's Workers' Compensation Law by: (1) increasing maximum and minimum benefits for injured workers and indexing the maximum to New York's average weekly wage; (2) dramatically reducing costs in the workers' compensation system, thus making hundreds of millions of dollars available annually to be translated into premium reductions; (3) establishing enhanced measures to combat workers' compensation fraud; (4) replacing the Special Disability Fund with enhanced protections for injured veterans; (5) preventing insurers from transferring costs to New York employers by closing the Special Disability Fund to new claims; and (6) creating a financing mechanism to allow for settlement of the Fund's existing liabilities.

The legislation amended section 27(4) of the Workers' Compensation Law to authorize the Superintendent to determine, by regulation, the "industry standard rate" for calculating simple interest to be used in calculating the present value of future benefits when the employer or insurer is required to deposit such amount into the Aggregate Trust Fund (ATF).

The legislation directs that it shall apply to all permanent partial disability awards made after July 1, 2007, and all death benefit awards made after December 31, 2000; every insurer writing workers' compensation insurance shall deposit into the ATF established under the Workers' Compensation Law an amount equal to the present value of all unpaid benefits. The Workers' Compensation Board (WCB) shall compute the present value thereof and require payment of such amount into the ATF.

Without the Superintendent's determination of the industry standard rate, the WCB is unable to compute the present value of amounts to be deposited into the ATF. Consequently, it is critical that this amendment be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Establishment of the industry standard rate for use in conjunction with payments made by workers' compensation insurers to the aggregate trust fund.

Purpose: To establish the interest rate applicable when workers' compensation insurers are required to deposit the present value of unpaid benefits for permanent partial disability and death benefit cases into the aggregate trust fund.

Text of emergency rule: Part 151 is hereby retitled: "Workers' Compensation Insurance Rates."

Part 151 (Regulation No. 119) is hereby renumbered Subpart 151-1, in sequence. Subpart 151-1 shall be entitled: "Rate Filings Prior Approval."

A new Subpart 151-2, entitled "Industry Standard Rate for Aggregate Trust Fund," is added to read as follows:

Section 151-2.1 Preamble.

(a) On March 13, 2007, legislation establishing comprehensive reform to New York's Workers' Compensation Law was signed into law, becoming chapter 6 of the laws of 2007. The legislation amended (1) section 27(2) of the Workers' Compensation Law to mandate that, for awards made pursuant to WCL § 15(3)(w) (permanent partial disability) after July 1, 2007, and (2) section 27(5) of the Workers' Compensation Law to mandate that, for awards made pursuant to WCL § 16 (death benefits)

after December 31, 2000; every insurer writing workers' compensation insurance shall deposit into the aggregate trust fund (ATF) established under the Workers' Compensation Law an amount equal to the present value of all unpaid benefits. The legislation also amends section 27 of the Workers' Compensation Law to mandate that the "industry standard rate" of interest, to be used in calculation of the present value of unpaid benefits, shall be determined by the Superintendent of Insurance by regulation.

(b) After discussions with the New York State Insurance Fund (NYSIF) (which administers the ATF), insurers, the Workers' Compensation Board, and other interested parties, the superintendent has determined the industry standard rate. Among the factors that were considered by the superintendent in making this determination were the following:

(1) the rate of return on invested assets experienced by the NYSIF in recent years;

(2) the investment performance of domestic property/casualty insurers;

(3) the rates of return on low risk investments of comparable duration to that of the ATF liabilities; and

(4) the discount rate used in calculating the minimum individual case reserves for policies of workers' compensation insurance, pursuant to section 4117(d) of the Insurance Law and section 86 of the Workers' Compensation Law.

Section 151-2.2 Industry Standard Rate.

The industry standard rate shall be five percent per year.

Section 151-2.3 Effective Date.

This Subpart shall apply to all permanent partial disability awards made on or after July 1, 2007, and all death benefits awards made after December 31, 2000, as mandated by chapter 6 of the laws of 2007.

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 10, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the first amendment to Part 151 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 119) derives from Sections 201 and 301 of the Insurance Law of the State of New York, and Section 27 of the Workers' Compensation Law of the State of New York. These sections establish the Superintendent's authority to approve workers' compensation premium rates and related materials that impact on premium rates.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 27 of the Workers' Compensation Law establishes the circumstances when insurers must deposit, into the aggregate trust fund (ATF), an amount equal to the present value of all unpaid benefits resulting from a claim for death benefits, or total permanent or permanent partial disability. It also establishes the formula for calculation of the present value of unpaid future benefits, including the direction that the "industry standard rate" of interest shall be determined by the Superintendent of Insurance by regulation.

2. Legislative objectives: Chapter 6 of the Laws of 2007 established comprehensive reforms to New York's Workers' Compensation Law by: (1) increasing maximum and minimum benefits for injured workers and indexing the maximum to New York's average weekly wage; (2) dramatically reducing costs in the workers' compensation system, thus making hundreds of millions of dollars available annually to be translated into premium reductions; (3) establishing enhanced measures to combat workers' compensation fraud; (4) replacing the Special Disability Fund with enhanced protections for injured veterans; (5) preventing insurers from transferring costs to New York employers by closing the Special Disability Fund to new claims; and (6) creating a financing mechanism to allow for settlement of the Fund's existing liabilities.

The legislation requires that, for all permanent partial disability awards made after July 1, 2007, and all death benefit awards made after December 31, 2000, every insurer writing workers' compensation insurance shall deposit into the ATF established under the Workers' Compensation Law an amount equal to the present value of all unpaid benefits. The legislation amended section 27(4) of the Workers' Compensation Law to authorize the Superintendent to determine, by regulation, the "industry standard rate" for calculating simple interest to be used in calculating the present

value of future benefits when the employer or insurer is required to deposit such amount into the ATF. The Workers' Compensation Board (WCB) shall compute the present value thereof and require payment of such amount into the ATF.

3. Needs and benefits: Chapter 6 of the Laws of 2007 added a provision to Section 27 of the Workers' Compensation Law whereby the Superintendent sets the "industry standard rate" to be used in calculating future workers' compensation indemnity liabilities when the WCB computes required contributions to the ATF. The industry standard rate constitutes the reduction from the full present value of a permanent partial disability or death benefit award to be applied in calculating the amount the carrier must pay into the ATF.

After discussions with the New York State Insurance Fund (NYSIF) (which administers the ATF), insurance carriers, the WCB, and other interested parties, the Superintendent has determined that the industry standard rate shall be set at 5% per year. This will increase the "discount" rate for carriers, since the previous law set the industry standard rate at 3% per year. The Superintendent's determination is based on the consideration of the following:

* A review of the rates of return on invested assets experienced by NYSIF in recent years indicates that it has realized returns that are at or near 5% per year. Prudent investment of the carrier contributions will insure that the ATF has adequate surplus to meet its obligations.

* The Department expects that NYSIF will settle a significant number of claims at an amount significantly less than the present value of the associated liabilities. The new law does not entitle insurers to recover any funds that remain after NYSIF settles, so settlement-related savings will add to ATF surplus.

* A 5% industry standard rate is consistent with the investment performance of New York-domiciled property/casualty insurers. Therefore, the Department does not expect that insurers will experience a windfall when transferring liabilities to the ATF.

* A 5% industry standard rate is consistent with the rates of return on low risk investments of duration comparable to that of the ATF liabilities.

* In establishing the minimum reserves under workers' compensation policies, Section 4117(d) of the Insurance Law and Section 86 of the Workers' Compensation Law require a company's individual case reserves to be no less than the sum of the present values, at five percent interest per annum, of the determined and unpaid losses, plus the estimated unpaid loss expenses.

4. Costs: This regulation does not establish any new requirements on regulated parties. The Legislature mandated that insurers deposit the present value of all unpaid benefits into the ATF, and that the Superintendent determine the "industry standard rate" by regulation. The determination of the industry standard rate affects the amount of the deposit that carriers must make into the ATF. The industry standard rate constitutes the reduction from the full present value of a permanent partial disability or death benefit award to be applied in calculating the amount the carrier must pay into the ATF. By virtue of the Superintendent's determination that the industry standard rate shall be set at 5% per year, the "discount" rate for carriers will be increased, since the previous law set the industry standard rate at 3% per year. Issues such as the timing of the application of the industry standard rate must be determined by the WCB and the NYSIF.

5. Local government mandates: This regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This regulation does not impose any new reporting requirements on regulated parties.

7. Duplication: This regulation does not duplicate any existing law or regulations.

8. Alternatives: The Legislature directed that the industry standard rate be determined by the Superintendent by regulation. The only alternatives were with regard to the factors considered in determining an appropriate industry standard rate. The Superintendent considered a "floating" rate keyed to financial market interest rate fluctuations. The floating rate was rejected as volatile and unpredictable. Should future adjustment of the industry standard rate become necessary, it can be accomplished by amendment to the regulation.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: The legislation requires that, for all permanent partial disability awards made after July 1, 2007, and all death benefit awards made after December 31, 2000, every insurer writing workers' compensation insurance shall deposit into the ATF an amount equal to the present value of all unpaid benefits. The Superintendent's responsibility is to establish the "industry standard rate" to be applied in calculating the amount the carrier must deposit in the ATF. Compliance standards are the responsibility of the WCB (which sets the present value of all unpaid benefits) and the NYSIF (as administrator of the ATF).

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all workers' compensation insurers authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of workers' compensation insurers, and believes that none of them falls within the definition of "small business", because there are none that are both independently owned and have less than one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Workers' compensation insurers, to which this regulation is applicable, do business in every county of the State, including rural areas as defined under section 102(13) of the State Administrative Procedure Act. Since the rule applies to the workers' compensation market throughout New York, not only to rural areas, the same regulation will apply to regulated entities across the state. Therefore, there is no adverse impact on rural areas as a result of this rule.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This revision will not add any new reporting requirements. No special type of professional services will be needed in order to comply with this requirement.

3. Costs: This regulation does not establish any new cost requirements on regulated parties. The Legislature mandated that insurers deposit awards pursuant to WCL § 15(3)(w) into the ATF, and that the superintendent determine the "industry standard rate" by regulation. The determination of the industry standard rate affects the amount of the deposit that carriers must make into the ATF. This amendment has no impact unique to rural areas.

4. Minimizing adverse impact: This regulation does not establish any new requirements on regulated parties. The Legislature mandated that insurers deposit the present value of all unpaid benefits into the ATF, and that the Superintendent determine the "industry standard rate" by regulation. The determination of the industry standard rate affects the amount of the deposit that carriers must make into the ATF. Issues such as the timing of the application of the industry standard rate must be determined by the WCB and the NYSIF.

Because the same requirements apply to both rural and non-rural entities, the amendment will have the same impact on all affected entities.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. Determination of the "industry standard rate" by the superintendent was mandated by the Legislature. It will affect the calculation of the present value of all unpaid benefits resulting from a claim for permanent partial disability and death benefits, and the resulting amount that workers' compensation insurers must pay into the aggregate trust fund (ATF) in such cases. The Legislature has determined that such payments are required. This rule only establishes the "discount" rate on the amount that must be deposited into the ATF. This rule should not have any impact on jobs and employment opportunities in this state.

Division of the Lottery

NOTICE OF ADOPTION

Lucky Sum Promotional Game Feature

I.D. No. LTR-44-07-00002-A

Filing No. 1388

Filing date: Dec. 17, 2007

Effective date: Jan. 2, 2008

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

Action taken: Amendment of Parts 2828 and 2832 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

Subject: Game feature of New York's Numbers and Win 4.

Purpose: To formally include the Lucky Sum game feature in existing Lottery regulations. The game is anticipated, on a full annual basis, to bring in more than \$53.9 million in revenue to benefit education in the State.

Text or summary was published in the notice of proposed rule making, I.D. No. LTR-44-07-00002-P, Issue of October 31, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Senior Attorney, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Lotto Extra

I.D. No. LTR-44-07-00003-A

Filing No. 1387

Filing date: Dec. 17, 2007

Effective date: Jan. 2, 2008

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

Action taken: Amendment of Part 2817 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

Subject: New York Lottery's Lotto Extra as an additional feature to the existing Lotto game.

Purpose: To formally include the Lotto Extra feature in existing Lottery regulations. The game is anticipated, on a full annual basis, to bring in more than \$5.4 million in revenue to benefit education in the State.

Text or summary was published in the notice of proposed rule making, I.D. No. LTR-44-07-00003-P, Issue of October 31, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Senior Attorney, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy to Governmental Customers Located in New York City

I.D. No. PAS-41-07-00006-A

Filing date: Dec. 18, 2007

Effective date: Period reflected in first bill following the date of filing following the date of filing this notice

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

Action taken: Increase in rates for sale of firm power and related tariff changes applicable to governmental customers located in New York City.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To recover the authority's cost of providing firm power and energy services.

Substance of final rule: The following is a summary of the formal written comments that were filed in accordance with SAPA regarding the proposal to revise rates for the New York City Governmental Customers for Rate Year 2008. A review and analysis by Power Authority staff of the five issues raised by the written comments is as follows:

Issue 1: Overall Fixed Costs Proposal for 2008

Comments: The PA/MTA raised concerns regarding the proposed 17.9% Fixed Costs increase in the Preliminary 2008 Cost of Service ("COS"). Citing the level of increases over the past two years, these Customers state that changes should track the rate of inflation on the order of 2.68% for 2006 and 1.83% projected for 2007.

Staff Analysis: Staff has reviewed the PA/MTA's comments that the Fixed Costs increases over the past two years have outpaced the Gross Domestic Product Implicit Price Deflator rate-of-inflation measure even though there have been no additions of new generating units dedicated to serving the Customers during that period.

Of the \$27.8 million proposed increase in the Fixed Costs component of the Preliminary 2008 Cost of Service, \$6.7 million is directly attributable to a Customer request during the LTA negotiations in calendar year 2004 to levelize the Poletti debt service schedule, thereby reducing the impact on rates in the first two years of the Long Term Agreements ("LTA") (this action has now become a net charge to the 2008 Preliminary COS). An additional \$2.5 million is earmarked for outside consulting assistance to facilitate a collaborative resource planning effort with the Customers to explore replacing the capacity requirements of the Poletti project, which is scheduled to shut down in early 2010.

Additionally, \$9.3 million is for payment of the initial principal component of the debt service for the Small Hydro projects' variable-rate debt, of which almost \$7.9 million, or 85%, is assignable to the Customers (the balance is recovered through the Westchester Governmental Customer rates). It should be noted that the same proportional market value of the total Small Hydro energy output is credited to the Customers. Finally, \$6.7 million is the amortized cost of the competitively bid outsourcing of outage maintenance for the 500 MW Combined Cycle Unit ("500 MW CCU") alluded to in the PA/MTA comments.

Staff contends that the level of Fixed Costs required should be predicated on the resources necessary to meet the Customers' needs and ensure effective operation of the facilities dedicated to them.

Recommendation: The \$2.5 million for outside consulting assistance to explore replacing the capacity requirements of the Poletti project is an estimate based on the anticipated work plan. Actual costs will depend on the results of the collaborative effort between the Authority and the Customers. In an effort to acknowledge the PA/MTA's concerns regarding the impact of the proposed increase on rates, staff recommends reducing the proposed 2008 Fixed Costs by \$2.5 million for future supply planning work and proposes recovering only the actual costs for this effort from the Customers in a mutually agreed-upon manner. Staff also recommends levelizing the impact of the Small Hydro debt service through 2015, which, along with other minor allocation adjustments, would further reduce the proposed 2008 Fixed Costs increase by \$3.3 million. This proposal would

also be considerably beneficial to the Customers in the 2009 and 2010 rate years.

These recommendations would reduce the proposed 2008 Fixed Costs by a total of \$5.8 million, resulting in an increase of \$20.7 million, or 13.5%, over 2007 Fixed Costs. This equates to an overall production increase of 0.36% to the Customers' rates for 2008.

Issue 2: O&M Component of Fixed Costs.

Comments: The Customers raised concerns that the O&M components of Fixed Costs, specifically the 500 MW CCU and Poletti projects are excessive. The City contends that the projected O&M for consulting services should be reduced by \$2.0 million based on its own assessment of historical costs.

In a similar vein, the PA/MTA request an O&M reduction of \$10 million, including \$1.8 million for Poletti. The PA/MTA also request a \$7.7 million reduction of the 500 MW CCU O&M based on their comparison of a group of "peer units," *i.e.*, generating plants of an allegedly similar nature elsewhere. Additionally, the PA/MTA request that staff consider outsourcing the operation of the 500 MW CCU and other fossil units to achieve perceived economies of scale, implies that the Authority is "cross-subsidizing" other facilities through the Fixed Costs O&M and contends that the Authority might be overly risk averse, resulting in "over-maintaining" the facilities dedicated to the Customers. The City claims that the \$1.7 million for consulting services was above historical levels over the past five years. The PA/MTA state that the overall Poletti O&M increases should be less than the rate of inflation given that the plant is scheduled for retirement in early 2010 and should be "capped" at 3% above the 2007 level, resulting in an overall O&M reduction of \$1.8 million.

Staff Analysis: Staff has reviewed both the City's and the PA/MTA's comments related to the Poletti O&M projection. Staff found these claims to be unsupported. The O&M estimates included in the 2008 Preliminary COS delivered to the Customers on May 15, 2007 was developed several months in advance of the formal 2008 O&M budget process, which was completed in early November. Consequently, the estimates in the Preliminary 2008 Cost of Service were based on very early cost projections. The final proposed 2008 O&M Poletti budget, which is also being presented for Trustee approval today, is \$16.8 million, \$2.7 million less than presented in the 2008 Preliminary COS, and is more in line with the Customers' expectations.

Staff has also reviewed the PA/MTA's further claims that the O&M projection for the 500 MW CCU is "excessive" based on their consultant's benchmarking analysis of a group of "peer units," *i.e.*, generating plants of an allegedly similar nature located mostly in the South and the West. Of the 17 units represented in the peer group, nine were greater than 1,000 MW, with one at almost 2,400 MW and five at less than 300 MW, which is not representative of "peer units." Two of the suggested "peer units" located in the West that are more representative of the 500 MW CCU had actual O&M (unadjusted for any New York City cost differences) of \$9.9 million and \$8 million, respectively, compared to the \$9.9 million projected in the 2008 Preliminary COS, before including the \$6.7 million of leveled outage costs associated with the Wood Group long-term services agreement. The Customers did not indicate whether the peer group data included outage costs. Staff has determined that the Customers' claim of "excessive" 500 MW CCU O&M costs per kW at 405% is unsupported by the data supplied.

However, because the plant needs several minor upgrades and, in part, since the 500 MW CCU has provided more generation output than expected, (500,000 MWH, or 23%, through October), the maintenance requirements are projected to be above the 2008 Preliminary COS estimate to ensure efficient and reliable operation in 2008 and beyond.

Staff has also reviewed the PA/MTA's comments regarding outsourcing operation of the fossil generating units dedicated to the Customers, cross-subsidization of costs and the Authority being overly averse to plant operating risks and has determined that these concerns should be addressed during the 2009 LTA Annual Process, scheduled to begin during the first quarter of 2008.

Recommendation: Staff recommends no changes to the O&M component of the projected 2008 Fixed Costs for the Customer-dedicated generating facilities included in the 2008 Preliminary COS. The additional 500 MW CCU work noted above will be offset by the reduction in the final 2008 Poletti O&M budget.

Issue 3: Shared Services.

Comments: The Customers request that the Authority reduce the Shared Services component of the Fixed Costs. Both the City and the PA/MTA justify their respective proposed reductions to this component by citing that the addition of an element to Shared Services, *i.e.*, Headquarters

Direct Support, is "inconsistent with past practices." The City requests a reduction of \$5.1 million and the PA/MTA, through separate analysis, requests a \$7.4 million reduction in Shared Services.

Staff Analysis: The Shared Services component of the Fixed Costs consists of the portion of the headquarters O&M budget not directly assignable to any facility or project, plus the Research & Development O&M budget offset by the allocation to capital projects.

These Shared Services estimates are based on the level of headquarters resources required to support the Customers and the proportional amount of corporate overhead allocated on the basis of labor assigned to the 500 MW CCU, Poletti and the Small Hydro projects. Historically, a hybrid allocation rate was developed from the labor allocations and direct-support cost projections. The Authority uses the same methodology to allocate the headquarters costs to the other Authority facilities.

The Authority's financial system does not provide for a Southeastern New York ("SENY") organizational center to capture costs relating to the administrative aspects (direct support) of serving the Customers and, consequently, all costs to serve these Customers flow through the Poletti, 500 MW CCU and Small Hydro projects. With the impending closure of Poletti in early 2010, there would have been a significant increase in the 500 MW CCU and Small Hydro allocation percentages to recover the same direct-support activities, including Marketing, Energy Risk Assessment and Control ("ERAC"), Energy Resource Management ("ERM"), Billing, etc. assigned through the Poletti project. To address this issue, staff segregated the direct-support activities under the Headquarters Direct Support component to separate these activities from the overall Shared Services. The methodology is exactly the same as in prior years, just presented differently.

The main drivers for the proposed increase are incremental post-Poletti supply planning consulting work, an increase in the overall Headquarters budget and additional level of effort to support the LTAs and not due to the addition of the Headquarters Direct Support component. If the same methodology were applied to the Final 2007 COS, the Headquarters Direct Support Component of the \$18.5 million of Shared Services would have been approximately \$6.5 million.

Recommendation: For the reasons stated above, staff recommends no changes to the Shared Services component of the Fixed Costs category.

Issue 4: Capital Costs – Other Capital Costs

Comments: The Customers request that the Authority eliminate the Other Capital Costs. Both the City and the PA/MTA have requested, through separate analysis, a \$2.9 million reduction for Other Capital Costs, citing a "departure from previous cost of service practices." The City also comments that "NYPA has not identified specific financing instruments used to fund the claimed working capital requirement" and the PA/MTA states that "NYPA can finance much of this investment through other cash flows that reduce the net cash-flow requirements of the organization."

Staff Analysis: Other Capital Costs represent the carrying costs or lost-opportunity costs for the Authority's investment in Plant Materials & Supplies for the Poletti and 500 MW CCU projects, oil inventory and NYMEX margin requirements dedicated to the Customers. Also included are the depreciation expense for capital additions to the Poletti and 500 MW CCU projects funded by the Authority's operating reserves, since all bond proceeds for the Poletti and 500 MW CCU projects have been exhausted.

The items noted above are assets funded by the Authority solely for the Customers' benefit, which do not earn a return. In fact, due to the average cost-pricing nature of inventories, the Authority is reimbursed through rates for the average issued price from inventories and not the replenishment costs, which are generally higher.

Staff contends that the \$2.9 million of Other Capital Costs is a legitimate cost that should be passed on to the Customers and rejects the Customers' claim that these costs should be excluded from the 2008 Preliminary COS.

Recommendation: For the reasons stated above, staff recommends no changes to the Other Capital Cost item.

Issue 5: Other Expenses – Asset Retirement Charges

Comments: The PA/MTA comment that while they are in agreement that the COS correctly includes Poletti and 500 MW CCU site-remediation charges, there should be an offsetting credit to the Customers for the salvage value of equipment and residual value of the property after site demolition and restoration. The PA/MTA further suggest a formal agreement with the Authority addressing the Customers' role in the future use and/or value of the property after the retirement of the Poletti and 500 MW CCU facilities.

Staff Analysis: Although the Poletti project is scheduled to close in early 2010, it is anticipated that actual decommissioning would occur simultaneously with the 500 MW CCU, sometime in 2030. Decommissioning does not presume or require that the land be disposed of and it is not possible at this time to foreclose the possibility that the land would continue to be used by the Authority for power generation purposes.

Recommendation: Staff recommends no action at this time and will pursue further discussions with the Customers regarding the Poletti and 500 MW CCU post-retirement property value.

Based on the foregoing analysis, the proposed increase of \$20.7 million in the Fixed Costs component of the production rates will be implemented.

In addition, subsequent to the issuance of the Notice of Proposed Rulemaking, staff recognized the need to revise Section "H" of the Common Provisions in Service Tariff No. 100. Section "H" stated that rates and charges shall be applied to service on or after the effective date, such that where bills included periods before and after the effective date, the rates and charges were to be prorated accordingly. Section "H" will be modified for production rates only to be consistent with the ECA billing procedures and to be applied on a billing-period basis. Section "H" relating to production rates will be moved from Section V Common Provisions to Section "C" under Section VI General Provisions Applicable to Production and modified to read as set forth below:

Revised Section "C": "Effective Date of Rates and Charges"

"The foregoing rates and charges shall apply to any billing period that includes service on and after the effective date hereof, and are applicable for the entire billing period."

For this rate action, the new rates will be effective on January 1, 2008 and will be applicable to the January 2008 billing period. The proration of the charges as described in the current Section "H" will still apply to delivery rates. The existing Section "H" (which will be applicable only to delivery) will be moved to Section "D" under General Provisions Applicable to Delivery.

The final rates combine the Trustee-authorized Fixed Costs increase with the Variable Costs increase achieved in accordance with the LTAs, for an estimated 0.36% increase in production rates effective January 1, 2008.

Final rule as compared with last published rule: Substantial revisions were made.

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

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.

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy to Governmental Customers in Westchester County

I.D. No. PAS-41-07-00007-A

Filing date: Dec. 18, 2007

Effective date: Period reflected in first bill following the date of filing this notice

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

Action taken: Increase in rates for sale of firm power and related tariff changes applicable to governmental customers located in Westchester County.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To recover the authority's cost of providing firm power and energy services.

Substance of final rule: No formal comments were received on the proposal. Based on Power Authority staff's analysis, the final increase in production rates for Westchester County Governmental Customers for Rate Year 2008 is 15.05%.

Subsequent to the issuance of the Notice of Proposed Rulemaking, staff recognized the need to revise Section "H" of the Common Provisions in

Service Tariff No. 200. Section "H" stated that rates and charges would be applied to service on or after the effective date, such that where bills included periods before and after the effective date, the rates and charges were to be prorated accordingly. Section "H" will be modified for production rates only to be consistent with the ECA billing procedures and to be applied on a billing-period basis. Section "H" relating to production rates will be moved from Section V Common Provisions to Section "B" under Section VI General Provisions Applicable to Production and modified to read as set forth below:

Revised Section "B": "Effective Date of Rates and Charges"

"The foregoing rates and charges shall apply to any billing period that includes service on and after the effective date hereof, and are applicable for the entire billing period."

For this rate action, the new production rates will be effective on January 1, 2008 and will be applicable to the January 2008 billing period. The proration of the charges as described in the current Section "H" will still apply to delivery rates. The existing Section "H" (which will be applicable to delivery only) will be moved to Section "D" under General Provisions Applicable to Delivery.

Final rule as compared with last published rule: Substantial revisions were made.

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

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.

Public Service Commission

NOTICE OF ADOPTION

Lightened Regulation by Noble Wethersfield Windpark, LLC

I.D. No. PSC-13-07-00011-A

Filing date: Dec. 18, 2007

Effective date: Dec. 18, 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 an order approving the petition of Noble Wethersfield Windpark, LLC (Noble) for a certificate of public convenience and necessity and providing for lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Noble's request for lightened regulation.

Purpose: To approve the request of Noble for lightened regulation.

Substance of final rule: The Commission adopted an order approving the petition of Noble Wethersfield Windpark, LLC for a Certificate of Public Convenience and Necessity and providing for lightened regulation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-E-0258SA1)

NOTICE OF ADOPTION

Franchising Process between the Town of French Creek and Time Warner Entertainment-Advance/Newhouse Partnership**I.D. No.** PSC-32-07-00006-A**Filing date:** Dec. 14, 2007**Effective date:** Dec. 14, 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 an order approving the Town of French Creek's request for a waiver of 16 NYCRR Part 894.1 through 894.4(b)(2) pertaining to the franchise renewal process.

Statutory authority: Public Service Law, section 222

Subject: Waiver certain preliminary franchising procedures.

Purpose: To allow the Town of French Creek to waive certain preliminary franchising procedures.

Substance of final rule: The Commission granted the Town of French Creek, Chautauqua County a waiver of 16 NYCRR, Parts 894.1 through 894.4(b)(2) pertaining to the franchising process.

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-V-0504SA1)

NOTICE OF ADOPTION

Competitive Transition Charges by Niagara Mohawk Power Corporation**I.D. No.** PSC-34-07-00026-A**Filing date:** Dec. 17, 2007**Effective date:** Dec. 17, 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 an order approving Niagara Mohawk Power Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. Nos. 207 and 214.

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

Subject: Competitive transition charges.

Purpose: To reset competitive transition charges in retail delivery rates and to adjust delivery rates associated with deferral recoveries for the calendar years 2008 and 2009.

Substance of final rule: The Public Service Commission approved Niagara Mohawk Power Corporation's compliance tariff amendments for the third Competitive Transition Charge reset as modified, 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.

(01-M-0075SA35)

NOTICE OF ADOPTION

Purchases of Installed Capacity by Consolidated Edison Company of New York, Inc.**I.D. No.** PSC-40-07-00007-A**Filing date:** Dec. 12, 2007**Effective date:** Dec. 12, 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 an order approving Consolidated Edison Company of New York, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 9.

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

Subject: Rider P—purchases of installed capacity.

Purpose: To approve the revision of the penalty provision of rider P—purchases of installed capacity pursuant to the rules of the New York independent system operator.

Substance of final rule: The Public Service Commission adopted an order approving the request of Consolidated Edison Company of New York, Inc.'s tariff amendment to modify Rider P—Purchases of Installed Capacity, pursuant to the rules of the New York Independent System Operator.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-E-1092SA1)

NOTICE OF ADOPTION

Implementation of a Conservation Incentive Program**I.D. No.** PSC-41-07-00008-A**Filing date:** Dec. 12, 2007**Effective date:** Dec. 12, 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 an order approving as a permanent rule its order issued Sept. 20, 2007, implementing a Conservation Incentive Program for National Fuel Gas Distribution Corporation (NFG).

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

Subject: Implementation of a Conservation Incentive Program.

Purpose: To approve as a permanent rule a Conservation Incentive Program for NFG.

Substance of final rule: The Public Service Commission adopted as a permanent rule the provisions of the September 20, 2007 Order for National Fuel Gas Distribution Corporation to implement a Conservation Incentive Program to provide energy efficiency programs for the 2007-2008 heating season.

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-0141SA2)

NOTICE OF ADOPTION

Waiver of Tariff Requirements by Niagara Mohawk Power Corporation d/b/a National Grid**I.D. No.** PSC-41-07-00010-A**Filing date:** Dec. 17, 2007**Effective date:** Dec. 17, 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 an order directing Niagara Mohawk Power Corporation d/b/a National Grid to treat Burrstone Energy Center LLC, and its customers Faxton-St. Luke's Health Care, Inc., Utica College, and St. Luke's Home Residential Health Care Facility, as occupying a single site for the purposes of its S.C. 7 standby service tariff, thereby eliminating the need for a waiver of the tariff.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 65(1), (3), 66(1), (2), (5), (9), (10), (11) and (12)

Subject: Waiver of tariff requirements.

Purpose: To eliminate the need for a waiver of tariff requirements.

Substance of final rule: The Commission adopted an order directing Niagara Mohawk Power Corporation d/b/a National Grid to treat Burrstone Energy Center LLC, and its customers Faxton-St. Luke's Health Care, Inc., Utica College, and St. Luke's Home Residential Health Care Facility, as occupying a single site for the purposes of its S.C. 7 standby service tariff, thereby eliminating the need for a waiver of the tariff, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-1033SA1)

NOTICE OF ADOPTION

Adjustment of Charge by Niagara Mohawk Power Corporation**I.D. No.** PSC-41-07-00013-A**Filing date:** Dec. 17, 2007**Effective date:** Dec. 17, 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 an order approving Niagara Mohawk Power Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 207.

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

Subject: Rule 40—adjustment of charge pursuant to the New York Power Authority hydropower benefit reconciliation.

Purpose: To approve the method of reconciling rule 40.

Substance of final rule: The Public Service Commission approved Niagara Mohawk Power Corporation tariff amendments to revise the method of reconciling Rule 40—adjustment of charge pursuant to the New York Power Authority Hydropower Benefit Reconciliation, 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.

(01-M-0075SA36)

NOTICE OF ADOPTION

Lightened Regulation by Noble Belmont Windpark, LLC**I.D. No.** PSC-42-07-00014-A**Filing date:** Dec. 18, 2007**Effective date:** Dec. 18, 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 an order approving Noble Belmont Windpark, LLC's (Noble Belmont) request for lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1) and 110

Subject: Request by Noble Belmont for lightened regulation as an electric corporation.

Purpose: To approve Noble Belmont's request for lightened regulation.

Substance of final rule: The Public Service Commission adopted an order approving Noble Belmont Windpark, LLC's request for lightened regulation as an electric corporation in connection with the development of the Belmont project, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-1096SA1)

NOTICE OF ADOPTION

Outdoor and Street Lighting Tariffs by New York State Electric & Gas Corporation**I.D. No.** PSC-43-07-00019-A**Filing date:** Dec. 14, 2007**Effective date:** Dec. 14, 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 an order approving New York State Electric & Gas Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. Nos. 120 and 121.

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

Subject: Outdoor and street lighting.

Purpose: To approve the revisions to outdoor and street lighting tariffs to comply with the requirements of the Energy Policy Act of 2005; and provide a new option to customers as mercury vapor fixtures are replaced.

Substance of final rule: The Public Service Commission adopted an order approving the request of New York State Electric & Gas Corporation's (the company) tariff amendments to revise its street and area lighting, and provide new options to customers who currently have Mercury Vapor lamps, and directed the company to file further revisions, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-1192SA1)

NOTICE OF ADOPTION

Outdoor and Street Lighting Tariffs by Rochester Gas and Electric Corporation**I.D. No.** PSC-43-07-00020-A**Filing date:** Dec. 12, 2007**Effective date:** Dec. 12, 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 an order approving Rochester Gas and Electric Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 18—Street Lighting, and P.S.C. No. 19—Electric.

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

Subject: Outdoor and street lighting.

Purpose: To approve the revision of outdoor and street lighting tariffs to comply with the requirements of the Energy Policy Act of 2005; provide a new option to customers as mercury vapor fixtures are replaced; and provide a high pressure sodium option for its arc lighting in lieu of incandescent arc lighting.

Substance of final rule: The Public Service Commission adopted an order approving Rochester Gas and Electric Corporation's tariff amendments to revise its street and area lighting, and provide new options to customers who currently have Mercury Vapor lamps installed.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-1195SA1)

NOTICE OF ADOPTION

Issuance of Preferred Stock by Corning Natural Gas Corporation**I.D. No.** PSC-43-07-00022-A**Filing date:** Dec. 13, 2007**Effective date:** Dec. 13, 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 the petition of Corning Natural Gas Corporation (the company) to amend its prior order issued June 21, 2007 and allow the company to issue up to \$14.9 million of preferred stock or common stock.

Statutory authority: Public Service Law, section 69

Subject: Issuance of preferred stock.

Purpose: To amend a prior commission order and allow the company to issue and sell up to \$14.9 million of preferred stock or common stock.

Substance of final rule: The Commission adopted an order approving the petition of Corning Natural Gas Corporation to amend the Commission's order issued June 21, 2007 and issue up to \$14.9 million of Preferred Stock or Common Stock to be exercised not later than December 31, 2011, 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-0445SA2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Interconnection Agreement between Citizens Telecommunications Company of New York and Talk America d/b/a Cavalier Telephone LLC****I.D. No.** PSC-01-08-00023-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and Talk America d/b/a Cavalier Telephone LLC for approval of an interconnection agreement executed on June 7, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Citizens Telecommunications Company of New York, Inc. and Talk America d/b/a Cavalier Telephone LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Citizens Telecommunications Company of New York, Inc. and Talk America d/b/a Cavalier Telephone LLC have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Talk America d/b/a Cavalier Telephone LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 6, 2008, or as extended.

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

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

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

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

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

(07-C-1353SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Interconnection Agreement between Verizon New York Inc. and First Communications, LLC****I.D. No.** PSC-01-08-00024-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and First Communications, LLC for approval of an interconnection agreement executed on Nov. 13, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and First Communications, LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and First Communications, LLC have reached a negotiated agreement whereby Verizon New York Inc. and First Communications, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions

under which the parties will interconnect their networks lasting until November 12, 2009, or as extended.

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-C-1403SA1)

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

Interconnection Agreement between Verizon New York Inc. and Sky Satellite Corp.

I.D. No. PSC-01-08-00025-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Sky Satellite Corp. for approval of an interconnection agreement executed on Oct. 11, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and Sky Satellite Corp. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Sky Satellite Corp. have reached a negotiated agreement whereby Verizon New York Inc. and Sky Satellite Corp. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until October 10, 2009, or as extended.

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-C-1405SA1)

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

Interconnection Agreement between Verizon New York Inc. and M5 Networks, Inc.

I.D. No. PSC-01-08-00026-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and M5 Networks, Inc. for approval of an interconnection agreement executed on Nov. 21, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and M5 Networks, Inc. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and M5 Networks, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and M5 Networks, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 20, 2009, or as extended.

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-C-1418SA1)

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

Interconnection Agreement between Frontier Communications of AuSable Valley, Inc. and Sprint Spectrum L.P.

I.D. No. PSC-01-08-00027-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of AuSable Valley, Inc. and Sprint Spectrum L.P. for approval of an interconnection agreement executed on Aug. 1, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Frontier Communications of AuSable Valley, Inc. and Sprint Spectrum L.P. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Frontier Communications of AuSable Valley, Inc. and Sprint Spectrum L.P. have reached a negotiated agreement whereby Frontier Communications of AuSable Valley, Inc. and Sprint Spectrum L.P. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 31, 2008, or as extended.

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-C-1419SA1)

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

Interconnection Agreement between Frontier Communications of Seneca-Gorham, Inc. and Sprint Spectrum L.P.

I.D. No. PSC-01-08-00028-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of Seneca-Gorham, Inc. and Sprint Spectrum L.P. for approval of an interconnection agreement executed on Aug. 1, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Frontier Communications of Seneca-Gorham, Inc. and Sprint Spectrum L.P. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Frontier Communications of Seneca-Gorham, Inc. and Sprint Spectrum L.P. have reached a negotiated agreement whereby Frontier Communications of Seneca-Gorham, Inc. and Sprint Spectrum L.P. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 31, 2008, or as extended.

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-C-1420SA1)

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

Interconnection Agreement between Ogden Telephone Company and Sprint Spectrum L.P.

I.D. No. PSC-01-08-00029-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Ogden Telephone Company and Sprint Spectrum L.P. for approval of an interconnection agreement executed on Aug. 1, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Ogden Telephone Company and Sprint Spectrum L.P. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Ogden Telephone Company and Sprint Spectrum L.P. have reached a negotiated agreement whereby Ogden Telephone Company and Sprint Spectrum L.P. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers.

The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 31, 2008, or as extended.

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-C-1421SA1)

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

Elimination of the Annual Limit on Non-Rate Incentives by Rochester Gas and Electric Corporation

I.D. No. PSC-01-08-00030-P

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

Proposed action: In a petition dated Dec. 5, 2007, Rochester Gas and Electric Corporation (RG&E) proposes to eliminate the \$5.5 million annual limit on expenditures for electric non-rate economic development incentives under its Economic Development Program.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12-b)

Subject: Elimination of the annual limit on non-rate incentives under RG&E's electric Economic Development Program.

Purpose: To consider the elimination of the annual limit on non-rate incentives under RG&E's electric Economic Development Program.

Substance of proposed rule: In a petition dated December 5, 2007, Rochester Gas and Electric Corporation (RG&E) proposes to eliminate the \$5.5 million annual limit on expenditures for electric non-rate economic development incentives under its Economic Development Program. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(02-E-0198SA12)

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

Recovery of Costs of an Energy Efficiency Program by the New York Association of Public Power

I.D. No. PSC-01-08-00031-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by the New

York Association of Public Power, on behalf of its member systems, for approval for its member systems to recover the costs of a new enhanced energy efficiency program, that it is undertaking in partnership with the New York Power Authority, through a charge of one mill per kWh in member systems' purchased power adjustment clauses.

Statutory authority: Public Service Law, sections 4(1), 66(12)

Subject: Recovery of costs of an energy efficiency program.

Purpose: To approve recovery of a charge of one mill per kWh to pay for an enhanced energy efficiency program.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by the New York Association of Public Power (NYAPP), on behalf of its member systems. NYAPP seeks approval for its member systems to recover costs of a new enhanced energy efficiency program, that it is undertaking in partnership with the New York Power Authority, through a charge of one mill per kWh in member systems' purchased power adjustment clauses.

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-1303SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by 447-453 West 18 LP

I.D. No. PSC-01-08-00032-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 447-453 West 18 LP to submeter electricity at 447 W. 18th St., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 447-453 West 18 LP to submeter electricity at 447 W. 18th Street, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 447-453 West 18 LP to submeter electricity at 447 West 18th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(07-E-1484SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Uniform System of Accounts by Central Hudson Gas & Electric Corporation

I.D. No. PSC-01-08-00033-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Central Hudson Gas & Electric Corporation (Central Hudson) for authority to defer certain gas expenses incurred in the rate year ended June 30, 2007.

Statutory authority: Public Service Law, section 66(9)

Subject: Uniform system of accounts — request for accounting authorization.

Purpose: To allow Central Hudson deferred accounting treatment for certain expenses beyond the end of the year in which such expenses were incurred.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (the company) requests permission to defer certain gas expenses that it asserts were beyond the company's ability to control incurred in the Rate Year ended June 30, 2007. The company proposes to defer such costs and associated deferred income taxes as a regulatory asset in Account 182.xx along with carrying charges on the deferred balance (net of tax). The company proposes to request recovery of these costs in its next general increase of base rates. If the Commission approves this deferral, there is a reasonable assurance the company will be allowed to recover these costs.

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

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

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

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

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

(07-G-1411SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Eligibility Requirements and Grant Ceiling Limits by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-01-08-00034-P

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

Proposed action: In its 2008 economic development plan update, Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) proposes modifications to various eligibility requirements and grant ceiling limits for a number of its economic development programs.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12-b)

Subject: Eligibility requirements and grant ceiling limits for various National Grid economic development programs.

Purpose: To consider eligibility requirements and grant ceiling limits for various National Grid economic development programs.

Substance of proposed rule: In its 2008 Economic Development Plan Update, Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) proposes modifications to various eligibility requirements and grant ceiling limits for a number of its economic development programs. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:

Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(01-M-0075SA39)

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

Proposed Financial Protections by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-01-08-00035-P

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

Proposed action: The commission is considering whether to approve, reject or modify, in whole or in part, a petition of Niagara Mohawk Power Corporation d/b/a National Grid (the Company) concerning proposed financial protections for the company consistent with those adopted for the KeySpan companies in Case 06-M-0878.

Statutory authority: Public Service Law, section 66

Subject: Proposed financial protections for Niagara Mohawk Power Corporation comparable to other National Grid New York affiliates.

Purpose: To adopt a set of financial protections for Niagara Mohawk Power Corporation.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify, in whole or in part, the petition of Niagara Mohawk Power Corporation d/b/a National Grid (the Company) concerning proposed financial protections. In its Order approving the merger of National Grid and KeySpan Corporation (Case 06-M-0878) the Commission adopted a set of financial requirements for the KeySpan companies to protect the public interest and required Niagara Mohawk to adopt comparable financial protections. The Company's petition proposes various financial protections including, for example, dividend restrictions and debt limits.

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.

(01-M-0075SA40)

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

Stray Voltage Testing by Orange and Rockland Utilities, Inc.

I.D. No. PSC-01-08-00036-P

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

Proposed action: The commission, is considering whether to grant, in whole or in part, or deny a request by Orange and Rockland Utilities, Inc. that the commission modify its rules concerning stray voltage testing.

Statutory authority: Public Service Law, section 66(1)

Subject: Stray voltage testing required by the commission's electric safety standards.

Purpose: To ensure the safe operation of electric facilities.

Substance of proposed rule: The Commission is considering whether to grant, in whole or in part, or deny a request by Orange and Rockland Utilities, Inc. that the Commission modify its rules concerning stray voltage testing.

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.

(06-M-1467SA1)

Racing and Wagering Board

**EMERGENCY
RULE MAKING**

Disqualification of a Horse for Intentional or Careless Interference

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

Filing No. 1376

Filing date: Dec. 12, 2007

Effective date: Dec. 12, 2007

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

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

Specific reasons underlying the finding of necessity: This rule is necessary to preserve the integrity of pari-mutuel racing and wagering in New York State, and thereby insure that the State can receive reasonable revenue in support of government arising from such wagering. This rule is designed to protect the betting public from intentional or negligent misconduct committed during the course of a horse race, and ensure that a jockey's conduct during the course of a race is both professional and beyond reproach. It is urgent that this rule be adopted to assure the public confidence and integrity of pari-mutuel racing on both a daily basis. This rule is necessary to ensure public confidence in such events, as well as provide for the continuing safety of the participating horses and jockeys.

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 of emergency rule: Subdivision (d) of Section 4035.2 of 9E NYCRR is amended to read as follows:

(d) [If a jockey willfully strikes another horse or jockey or rides willfully or carelessly so as to injure another horse, which is in no way in fault, or so as to cause other horses to do so, his horse is disqualified.] *A jockey shall not ride carelessly or willfully such that his mount, equipment, or any item or object under his or her control interferes with, impedes, intimidates, or injures another horse or jockey in the race, including that a jockey shall not carelessly or willfully strike another horse or jockey or his or her equipment with his or her whip. The stewards may disqualify the*

horse ridden by the jockey who committed the foul if the foul was willful or careless or may have altered the finish of the race; the stewards may also take into consideration mitigating factors such as whether the impeded horse was partly at fault or if the foul was caused by the fault of some other horse or jockey.

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-43-07-00011-P, Issue of October 24, 2007. The emergency rule will expire February 9, 2008.

Text of emergency 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, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL), subdivision 1 of section 101, section 207 and section 212. Subdivision 1 of section 101 of the RPWBL grants the Racing and Wagering Board (Board) general jurisdiction over all horse racing activities in the state. Section 207 states that all thoroughbred races or race meetings shall be subject to such reasonable rules and regulations from time to time prescribed by the Board. Section 212 of the RPWBL requires that three stewards supervise each thoroughbred race meeting, and that such stewards shall exercise powers and perform such duties at each race meeting as may be prescribed by the rules of the Board.

2. Legislative objectives: To enable the Board to assure the public's confidence in -- and preserve the integrity of -- racing at pari-mutuel wagering tracks located in New York State, and to ensure that the state can receive reasonable revenue in support of government arising from such wagering.

3. Needs and benefits: This rule is necessary to ensure safe and professional conduct of jockeys during the course of a thoroughbred race, to preserve the integrity of pari-mutuel racing and wagering in New York State, and to insure that the state can receive reasonable revenue in support of government arising from such wagering. This rule is designed to protect the betting public from intentional or negligent misconduct committed during the course of a horse race, and ensure that a jockey's conduct during the course of a race is both professional and beyond reproach. This rule is necessary to ensure public confidence in such events.

The purpose of section 4035.2(d) is to prohibit intentional or careless interference during the course of a race. Previously, the rule generally prohibited such interference. However, during the course of a recent administrative hearing where a horse was disqualified due to a jockey striking another horse in the head with a whip as the second horse was advancing, the appealing party successfully argued that the contact was not willful and that since subdivision (d) of Section 4035.2 of the Board's thoroughbred rules did not expressly prohibit a jockey from carelessly striking another horse, the disqualification was erroneous. In fact, Section 4035.2(d) prohibits a jockey from *riding* "willfully or carelessly" while the prohibition against *striking* another horse or jockey merely had to be willful in order to be a violation. There is no provision for "carelessness" in the rule as it pertains to *striking* another horse or jockey. This loophole creates a dangerous racing environment whereby stewards would have to determine that a jockey acted willfully in striking another horse or jockey with a whip before disqualifying a horse for such misconduct. This rulemaking will close that loophole and is necessary to ensure the integrity of horseracing.

This amendment is also necessary from a legal perspective in that it adopts more specific language regarding what action or actions constitute foul riding. The language of the current rule is narrow and needs to define all conduct that comprises interference. In addition to interfering with another horse or jockey, the language of the amendment also prohibits a jockey from impeding, intimidating or injuring another horse. Similarly, current language is vague as to what constitutes striking. The amendment specifies the prohibited use of a mount, equipment or other object under a jockey's control. In short, this amendment is necessary to close all technical loopholes regarding foul riding.

This amendment is necessary to grant the stewards necessary discretion in considering mitigating factors as to whether disqualification is necessary.

4. Costs:

(a) Cost to regulated parties for the implementation of continuing compliance with the rule: None. This rule pertains to the conduct of jockeys during the course of a horse race, and imposes no costs upon them.

(b) Costs to the agency, state and local governments for the implementation and continuation of the rule: None. The Board is the sole government agency responsible for the regulation of thoroughbred racing in New York State. This rule can be enforced under the existing regulatory system with no added costs.

(c) The information, including the source of such information and the methodology upon which the cost analysis is based: This cost information was determined by the Office of Counsel of the New York State Racing and Wagering Board.

(d) There are no costs associated with this rule, so no estimates have been provided.

5. Local government mandates: None. Local governments do not regulate horse racing in the State of New York.

6. Paperwork: None. Stewards would use the existing paperwork requirements for riding violations.

7. Duplication: None. The Board is the only entity whose duty is to regulate horse racing in the State of New York, and there are no other controlling rules or regulations.

8. Alternatives: There are no other alternatives to consider. This rulemaking is designed to close technical loopholes in a rule that is designed to ensure the safety of jockeys and ensure the integrity of thoroughbred horse racing in New York State. The alternative would be to leave the existing rule in place, which is unacceptable given that it is not specific enough as it applies to prohibited conduct, nor does it grant adequate discretion to stewards in cases where disqualification is not merited.

9. Federal standards: None. However, the use of whip provision of this rule amendment is consistent with the Model Rule on Interference and Use of Whip prescribed by the Association of Racing Commissioners International, which states that "No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment."

10. Compliance schedule: This rulemaking will be effective upon submission to the Department of State as an emergency rulemaking and will remain in effect for 90 days. This rulemaking will become permanent upon adoption after publication in the *State Register* and after the statutorily required 45-day public comment period.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis 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 conduct of jockeys during a professional sporting event. It does not diminish their substantive job duties or their opportunity to earn a living. The rule prohibits a jockey from striking or injuring another jockey or horse during a thoroughbred race, and allows race stewards to disqualify a horse if its jockey violates the rule. As is apparent from the nature of the rule, the rule neither affects small business, local governments, jobs nor rural areas. Prohibiting riding fouls during the course of a thoroughbred race, or otherwise disqualifying such horse, does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it 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. The rule can be enforced using existing regulatory methods and technology.

Department of State

EMERGENCY RULE MAKING

Manufactured Homes

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

Filing No. 1375

Filing date: Dec. 12, 2007

Effective date: Dec. 12, 2007

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

Action taken: Addition of Part 1210 to Title 19 NYCRR.

Statutory authority: Executive Law, section 604

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

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

Subject: Manufactured homes.

Purpose: To implement art. 21-B of the Executive Law, as added by L. 2005, ch. 729.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. DOS-47-07-00018-P, Issue of November 21, 2007. The emergency rule will expire February 9, 2008.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

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

2. LEGISLATIVE OBJECTIVES.

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

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

3. NEEDS AND BENEFITS.

This rule establishes procedures regarding manufacturer's and installer's warranty seals. These procedures are necessary to implement the warranty seal provisions of Article 21-B. These provisions permit manu-

facturers and installers to obtain the warranty seals, specify the manner in which and place where the warranty seals are to be attached, establish the fees to be paid by manufacturers and installers for obtaining the warranty seals, and establish the maximum fees that can be charged by manufacturers and installers for attaching the warranty seals.

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

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

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

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

4. COSTS.

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

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

This rule will require manufacturers, retailers, installers, and mechanics to be certified by the Department. The fee for certification for a period of 2 years will be \$200 for manufacturers, retailers, and installers, and \$100 for mechanics. However, a person employed by a person who or a business entity which is certified may apply for a limited certificate, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer. The fee for limited certification for a period of 2 years will be \$25.

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

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

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

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

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

b. Costs to the Department:

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

c. Costs to other State agencies:

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

d. Cost to local governments:

This rule does not impose any costs on local governments.

5. PAPERWORK.

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

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any duty on local governments.

7. DUPLICATION.

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

8. ALTERNATIVES.

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

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

The Department considered adopting provisions setting financial responsibility requirements at levels higher or lower than those specified in this rule (viz., \$50,000 for a manufacturer, \$25,000 for a retailer, \$10,000 for an installer, and \$5,000 for a mechanic). The alternative of setting higher financial responsibility requirements was not adopted in this rule because the Department believes that increasing those requirements would increase the cost of obtaining the required surety bond, letter of credit or deposit account control agreement (which, in turn, would increase the costs to be passed on to homeowners), and may make it more difficult, or even impossible, for some individuals to obtain the required surety bond, letter of credit, or deposit control agreement (which, in turn, would limit

homeowner's options in choosing installers and mechanics). The alternative of setting lower financial responsibility requirements was not adopted because the Department believes that lowering those requirements would not provide adequate protection to the owner of a manufactured home with a substantial defect in its delivered condition, installation, service or construction.

9. FEDERAL STANDARDS.

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

10. COMPLIANCE SCHEDULE.

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

Summary of Regulatory Flexibility Analysis

1. EFFECT OF RULE.

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

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

2. COMPLIANCE REQUIREMENTS.

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

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

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. The qualifications for obtaining and retaining certification include (1) the filing of a surety bond, letter of credit, or deposit account control agreement; (2) having have at least a high school education, or the equivalent; (3) satisfying specified experience requirements; (4) satisfying specified initial training requirements; (5) in the case of an installer or mechanic, passing a written examination; and (6) satisfying specified continuing education requirements. In addition, a certified manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes.

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

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

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

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

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

This rule establishes requirements for approval of instructional providers.

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

3. PROFESSIONAL SERVICES.

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

4. COMPLIANCE COSTS.

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

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

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

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

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

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

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

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

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

6. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the size of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for small

businesses than for it will be for larger businesses. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

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

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

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

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

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

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

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

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. Applications for certification are to be in writing, on forms provided by or otherwise acceptable to the Department of State. The qualifications for obtaining and retaining certification are summarized in paragraph 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

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

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

independently determined that such manufactured home has been installed in accordance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code.

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

3. COSTS.

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

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

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

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

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

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

Such costs are not likely to vary significantly for different types of public and private entities in rural areas. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the fee for a letter of credit or premium for a surety bond may be dependent, in part, on the location of the business for which the letter of credit or surety bond is issued.

4. MINIMIZING ADVERSE IMPACT.

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

5. RURAL AREA PARTICIPATION.

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

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

Job Impact Statement

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

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

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

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

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

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

(3) Generally, each certificate holder will be required to file a deposit account control agreement, letter of credit, or surety bond. Those certificate holders who file a letter of credit will be required to pay fees to the financial institutions that issue such letters of credit, and those certificate holders who file a surety bond will be required to pay premiums to the insurance companies that issue such bonds. However, the holder of a limited certificate will not be required to file a deposit account control agreement, letter of credit, or surety bond, provided that his or her certified employer has filed an acceptable deposit account control agreement, letter of credit, or surety bond.

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

Susquehanna River Basin Commission

Notice of Actions Taken at December 5, 2007 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on December 5, 2007 in Lancaster, Pennsylvania, the Commission: 1) recognized former Pennsylvania State Senator Noah Wenger and outgoing New York Alternate Member Scott Foti, 2) heard a report on hydrologic conditions in the basin, 3) adopted a final rule making action and a companion resolution regarding agricultural consumptive use, 4) approved a new aquifer testing guidance for project sponsors proposing groundwater withdrawals, 5) accepted the FY 2007 audit report, and 6) approved a grant and three contracts. The Commission also conducted a public hearing to approve certain water resources projects, to accept three settlement agreements, to deny a request for an administrative hearing, to extend two emergency water withdrawal certificates, and to adopt a revised project fee schedule. See the Supplementary Information section below for more details on these actions.

DATE: December 5, 2007.

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

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

SUPPLEMENTARY INFORMATION: The final rule making action amends the consumptive use provisions of 18 CFR Part 806 relating to agricultural water use and Part 808 relating to an erroneous authority citation, and a companion resolution determines that certain projects supported by the Commission's member states provide sufficient mitigation for agricultural consumptive use. Also, the Commission approved a grant for Chesapeake Bay nutrient monitoring and contracts for the development of a Yield Analysis Tool, the production of New York State inundation maps, and the commencement of a comprehensive water resources study for the Morrison Cove area of the Juniata Subbasin.

The Commission also convened a public hearing and took the following actions:

Public Hearing – Projects Approved

1. Project Sponsor and Facility: Village of Waverly (Well 4), Tioga County, N.Y. Modification of groundwater approval (Docket No. 20030207).

2. Project Sponsor and Facility: Sno Mountain LLC, Scranton City, Lackawanna County, Pa. Application to transfer approvals for surface water withdrawal of 7.300 mgd and consumptive water use of up to 1.600 mgd (Docket No. 20030405).

3. Project Sponsor: Graymont (PA) Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Modification of consumptive water use approval (Docket No. 20050306).

4. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Modification of consumptive water use approval (Docket No. 20050307).

5. Project Sponsor: Parkwood Resources, Inc. Project Facility: Cherry Tree Mine, Burnside Township, Indiana and Clearfield Counties, Pa. Application for consumptive water use of up to 0.225 mgd.

6. Project Sponsor and Facility: Mountainview Thoroughbred Racing Association, Inc., East Hanover Township, Dauphin County, Pa. Modification of consumptive water use approval (Docket No. 20020819).

7. Project Sponsor and Facility: King Drive Corp., Middle Paxton Township, Dauphin County, Pa. Modification of consumptive water use approval (Docket No. 20020615).

8. Project Sponsor and Facility: York Plant Holding LLC, Springettsbury Township, York County, Pa. Application for consumptive water use of up to 0.575 mgd.

Public Hearing – Enforcement Actions Approved:

Settlement agreements were accepted for the following projects:

1. Project Sponsor and Facility: Cooperstown Dreams Park, Inc. (Docket No. 20060602), Town of Hartwick, Otsego County, N.Y.

2. Project Sponsor: Sand Springs Development Corp. (Docket No. 20030406). Project Facility: Sand Springs Golf Community, Butler Township, Luzerne County, Pa.

3. Project Sponsor and Facility: BC Natural Chicken, LLC (Docket No. 20040305), Bethel Township, Lebanon County, Pa.

Public Hearing – Denial of Request for Administrative Hearing:

Under Section 808.2 of the Commission's Regulation relating to administrative appeals, the Commission denied a request for an administrative hearing concerning the following project: Project Sponsor - PPL Susquehanna, LLC; Project Facility - Susquehanna Steam Electric Station, Salem Township, Luzerne County, Pa. (Docket No. 19950301).

Public Hearing – Extension of Emergency Water Withdrawal Certificates:

Emergency water withdrawal certificates were extended for the following projects:

1. Project Sponsor and Facility: City of Lock Haven, Wayne Township, Clinton County, Pa. 2.

2. Project Sponsor and Facility: Houtzdale Municipal Authority (Docket No. 19950101), Rush Township, Centre County, Pa.

Public Hearing – Fee Schedule Revision

The Commission adopted a revised project fee schedule that includes categorical fee adjustments for inflation and the addition of a fee category for withdrawals of less than 100,000 gpd involving a consumptive use. The revised schedule takes effect on January 1, 2008 and remains in effect until December 31, 2008.

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