

# RULE MAKING ACTIVITIES

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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.

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Agricultural and Farmland Protection

**I.D. No.** AAM-17-08-00030-A  
**Filing No.** 602  
**Filing date:** June 17, 2008  
**Effective date:** July 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 390 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, section 325

**Subject:** Agricultural and farmland protection planning grants.

**Purpose:** To amend regulations governing State assistance payments for agricultural and farmland protection.

**Text or summary was published** in the notice of proposed rule making, I.D. No. AAM-17-08-00030-P, Issue of April 23, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** William Kimball, Director, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-7076, e-mail: bill.kimball@agmkt.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

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## Department of Audit and Control

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

#### The Requirement of Acknowledgment Signatures for Certain Abandoned Property Forms and Agreements Submitted to the Comptroller

**I.D. No.** AAC-27-08-00004-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 129.1 to Title 2 NYCRR.

**Statutory authority:** Abandoned Property Law, sections 1401, 1414 and 1416

**Subject:** The requirement of acknowledgment signatures for certain abandoned property forms and agreements submitted to the comptroller.

**Purpose:** To ensure no confidential information pertaining to abandoned funds is released to unauthorized persons.

**Text of proposed rule:** Section 129.1 of Part 129 is added to Title 2 of NYCRR as follows:

#### Section 129.1

(a) Accordingly, the Comptroller shall not reveal any confidential information including the value of abandoned property to any claimant or their agent unless such person provides proof of an interest in the abandoned property and the following:

(i) a claim form, or other supplemental claim form deemed necessary by the Comptroller, signed by the person making claim and duly acknowledged by the person in the manner prescribed for the acknowledgement of a conveyance of real property in accordance with the Real Property Law;

(ii) in the case of claimant engaging the services of a finder for consideration, the finder must present to the Comptroller a finder agreement executed in accordance with section 1416 of the Abandoned Property Law signed by the claimant and such signature shall be duly acknowledged by the claimant in the manner prescribed for the acknowledgement of a conveyance of real property in accordance with the Real Property Law.

(b) Comptroller may waive subdivision (b) of this section may be waived within the discretion of the Comptroller provided that the Comptroller determines that satisfactory proof has otherwise been submitted by the claimant establishing that the claimant is the owner of the abandoned property.

**Text of proposed rule and any required statements and analyses may be obtained from:** Wendy H. Reeder, Office of the State Comptroller, 110 State St., Albany, NY 12236, (518) 474-5714, e-mail: wreeder@osc.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

This rule is authorized under sections 1401, 1414 and 1416 of the Abandoned Property Law. Section 1414 authorizes the Comptroller to make rules and regulations necessary to enforce the provisions of the Abandoned Property Law. Section 1401 provides that the Comptroller shall not reveal confidential information relating to funds reported to the Abandoned Property Fund except in the discretion of the Comptroller. Additionally, such section provides that the value of the property cannot be revealed to any person unless they have provided satisfactory proof of an interest or title to the property. Accordingly, it is proper for the Comptroller to promulgate rules that define uniform situations where it is proper to reveal any such confidential information. Further, section 1416 provides the method by which a claimant may enter into an agreement ("Finder Agreement") with a third party ("Finder"), which is essentially an agreement whereby the claimant hires an agent to assist in the processing of his or her claim in exchange for a percentage of the property recovered. In order to synthesize section 1416 with section 1401, there must be a uniform method to determine that the identity of the claimant who has signed the Finder Agreement in order to release confidential information to the Finder.

## 2. Legislative Objectives

The proposed rule enables the Comptroller to continue to operate within the statutory requirement that no confidential information may be revealed to any claimant or Finder without a determination of their interest in the property.

## 3. Needs and Benefits

Since statutorily, confidential information cannot be released to any person unless the Comptroller has determined they hold an interest in the abandoned property, it is necessary to provide a uniform method to determine the identity of a claimant. This is of particular concern when the confidential information will be conveyed to Finders representing claimants who have Finder Agreements under section 1416, and by virtue of such agreement have an interest in recovering the abandoned property.

In the past the Comptroller has required that the Finder present the executed Finder Agreement and such agreement contain the notarized signature of the claimant before revealing any confidential information; however a recent Appellate Division decision concluded a rule must be promulgated in order for the Comptroller to exercise his discretion in this manner. Accordingly, in order to continue uniform processing of claims and avoid contravention with the Comptroller's statutory duties, this rule must promulgated.

## 4. Costs

Pursuant to section 136 of the Executive Law a notary may not charge more than \$2 for taking an acknowledgment of a signature. Therefore the claimants will pay a fee up to \$2 for each notarization. There will be no cost to the Comptroller's Office.

## 5. Local Government Mandates

Generally, local governments generally have notaries on staff therefore there will be little impact on the local government.

## 6. Paperwork

No new paperwork will be required.

## 7. Duplication

None.

## 8. Alternatives

An alternative to requiring notarization would be to require that all claimants provide their social security numbers. This would allow the Comptroller to determine the identity of the claimant with little impact to current processing.

This alternative must be rejected because, while currently the Office of Unclaimed Funds Claim Form requests the claimant's social security number, pursuant to State and Federal Law a response to such request is not mandatory. Because the Comptroller's Office cannot require the claimant report their social security number under law, it would be inappropriate to use this as a means of verifying identity in a uniform manner.

## 9. Federal Standards

This rule does not exceed any Federal standard.

## 10. Compliance Schedule

It is estimated that regulated parties will be able to achieve compliance immediately. Abandoned Property forms already request notarization and

the majority of all claimants provide a notarized signature on such forms. As to Finder Agreements, the Comptroller's Finder Brochure already advises finders to obtain a notarized signature of the claimant on the Finder Agreement; therefore nearly all Finders are already in compliance.

## Regulatory Flexibility Analysis

### 1. Effect of Rule

This rule will have a minimal on small businesses. Pursuant to section 136 of the Executive Law acknowledgments performed by a notary cost \$2. Such fee is de minimus, considering most businesses do not institute multiple claims. As to local governments, generally, they have notaries on staff therefore; there is likely no cost to a local government.

### 2. Compliance Requirements

A local government or small business need only appear before a notary public if they wish to submit Abandoned Property forms or a Finder Agreement to the Office of Unclaimed Funds to recover abandoned funds.

### 3. Professional Services

Again, local governments and small businesses need only appear before a notary public if they wish to submit Abandoned Property forms or a Finder Agreement to the Office of Unclaimed Funds to recover abandoned funds.

### 4. Compliance Costs

Pursuant to section 136 of the Executive Law acknowledgments performed by a notary cost \$2; therefore the cost to small businesses is de minimus. Further since local governments have notaries on staff there is likely to be no compliance costs to local governments.

### 5. Economic and Technological Feasibility

There are no issues to the economic and technological feasibility of this rule. The claimant need only appear before a notary public and at most pay the notary a fee of \$2.

### 6. Minimizing Adverse Impact

This rule is designed to have minimal adverse economic impact on a small business and local government. The \$2 fee for obtaining an acknowledgment before a notary public is de minimus. If the Comptroller's Office was obligated to verify the identity of the claimant in another non-uniform manner such verification would have a greater adverse impact on the operations of the Comptroller's Office.

### 7. Small Business and Local Government Participation

Since the Comptroller's Office has previously requested abandoned property claim forms and Finder Agreements contain an acknowledgment, small businesses and local governments have already been complying with this requirement. The Comptroller's Office has received very little response to this requirement and it is believed most small businesses and local governments have no issues with the implementation of this rule.

## Rural Area Flexibility Analysis

### 1. Types and Estimated Numbers of Rural Areas

This rule will affect all rural areas.

### 2. Reporting, Recordkeeping and other Compliance Requirements; and Professional Services

The only necessary professional services required in rural areas are the services of a notary public.

### 3. Costs

Pursuant to the Executive Law a notary may only charge \$2 for taking an acknowledgment, such fee is de minimus.

### 4. Minimizing Adverse Impact

This rule is designed to have minimal adverse economic impact on rural areas. The \$2 one time fee for obtaining an acknowledgment before a notary public is de minimus. If the Comptroller's Office was obligated to verify the identity of the signer of the using other methods there would be greater economic impact.

### 5. Rural Area Participation

Since the Comptroller's Office has previously required abandoned property forms and Finder Agreements contain an acknowledgment, claimants in rural areas have already been complying with this requirement. The Comptroller's Office has received very little response to this requirement and it is believed claimants in rural areas have no issues with the implementation of this rule.

## Department of Correctional Services

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

**Gowanda Correctional Facility**

**I.D. No.** COR-27-08-00003-P

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

**Proposed action:** This is a consensus rule making to amend section 100.128(c) of Title 7 NYCRR.

**Statutory authority:** Correction Law, sections 70 and 112

**Subject:** Gowanda Correctional Facility.

**Purpose:** To remove reference to a programming designation (VAST) that is no longer functioning.

**Text of proposed rule:** Amend 7 NYCRR, section 100.128(c) as follows:

(c) Gowanda Correctional Facility shall be classified as a medium security facility to be used as a general confinement facility. [and vocational skills and training (VAST) facility.]

**Text of proposed rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12206-2050, (518) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

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

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

**Consensus Rule Making Determination**

The Department of Correctional Services has determined that no person is likely to object to the proposed amendment as it is simply removing from the text of the rule the programmatic designation, vocational skills and training (VAST). This inmate program is no longer provided at the facility.

**Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. The vocational skills and training (VAST) program was discontinued several years ago. It could not continue to be supported due to the introduction of programming such as the residential Sex Offender Program (SOP). The facility continues to provide a wide array of academic, vocational, substance abuse treatment and transitional services programming for inmates.

## Office of Mental Health

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

**Placement or Transfer of Patients**

**I.D. No.** OMH-27-08-00002-P

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

**Proposed action:** Amendment of Part 540 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 7.09; Criminal Procedure Law, section 730.40

**Subject:** Placement or transfer of patients.

**Purpose:** To amend regulations pertaining to transfer or placement of patients.

**Text of proposed rule:** Pursuant to the authority granted the Commissioner in Article 730 of the Criminal Procedure Law and Sections 7.09 and 31.04 of the Mental Hygiene Law, Section 540.6 of Part 540 of Title 14 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows:

540.6 Placement or [T]ransfer of patients.

(a) Orders remanding persons to the custody of the Commissioner.

(1) Designation of a secure facility.

In cases where a person is to be remanded to the Commissioner pursuant to a final order of observation, as defined in subdivision (i) of Section 540.2 of this Part, the Commissioner may designate a secure facility to receive such person in cases where the person has:

(i) open felony charges or warrants or a pending parole revocation hearing; or

(ii) a history of arrests for violent crimes or threats to commit violent crimes against persons or a history that includes escape or attempted escape from a psychiatric facility, and, based upon a review of available information, the Commissioner believes such person would likely meet the secure retention standards in paragraph (4) of this subdivision.

(2) Designated Secure Facility Procedure. Within 72 hours of receiving a person from a criminal court who appears to meet any of the criteria identified in paragraph (1) of this subdivision, the designated secure facility will:

(i) evaluate the person to confirm that he or she does meet such criteria; and

(ii) determine:

(A) if the person has a mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare; and

(B) if the person's judgment is so impaired that he is unable to understand the need for such care and treatment; and

(C) if, as a result of mental illness, the person poses a risk of harm to self or others; and

(iii) give notice that this patient is now a civil patient and no further notice, pursuant to subdivision (6) of Section 730.60 of the Criminal Procedure Law and subdivision (h) of Section 29.11 of the Mental Hygiene Law, shall be given of transfer to a non-secure facility or release, unless such notice is in compliance with the provisions of Section 33.13 of the Mental Hygiene Law. Such notice shall be given to:

(A) the district attorney of the county from which the patient was committed;

(B) the superintendent of State Police;

(C) the sheriff of the county where the facility is located;

(D) the police department having jurisdiction of the area where the facility is located;

(E) any person who may reasonably be expected to be the victim of any assault or any violent felony, as defined in the Penal law, which would be carried out by the committed person;

(F) the Mental Hygiene Legal Service or other attorney representing the patient, if any; and

(G) any person or entity the court that committed the patient to the custody of the Commissioner may have designated in the order issued under Article 730 of the Criminal Procedure Law.

(3) Notice. Within 24 hours of confirming the need to admit the patient to the secure facility, the director of such facility shall provide notice of the Commissioner's determination that the patient needs secure placement and of the patient's right to object to placement at such secure facility to: the patient, the nearest relative of the patient, if there be any known to him, and to the Mental Hygiene Legal Service or other legal representative.

(4) Hospital Forensic Committee Review. Within 30 days of the patient's placement in a designated secure facility pursuant to subparagraph (ii) of paragraph (1) of this subdivision, the facility's hospital forensic committee shall review the patient's placement in that facility to confirm that there is a substantial risk that such patient may cause physical harm to other persons, as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious harm and therefore the patient needs the close supervision provided by a secure facility.

(5) Objection. If the patient has been placed in a secure facility pursuant to subparagraph (ii) of paragraph (1) of this subdivision, such patient, or anyone on his/her behalf may file a written objection to the placement with the director of the facility after the 30-day review period has elapsed and a decision to retain the patient at the secure facility has been made. The patient or his/her representative may support the objection by filing with the director, within 10 days, exclusive of Saturdays, Sundays and holidays, of the 30-day or periodic review done pursuant to paragraph (4) or (7) of subdivision (a), appropriate written arguments supported by documents, statements, and affidavits. The director shall send the notice of

objection and any material submitted by the patient or the person filing an objection on the patient's behalf to the Commissioner or his/her designee. The director may also send to the Commissioner or his/her designee written arguments supported by documents, statements, and affidavits in support of his/her decision to admit the patient to a secure facility, provided that a copy of such material be provided to the patient and his/her representative(s).

(6) Determination.

(i) If no objection is received to the notice of determination for placement in a secure facility, the director shall so notify the Commissioner or his/her designee.

(ii) If objection has been filed, the Commissioner or his/her designee shall designate a qualified psychiatrist or licensed psychologist not on the staff of the secure facility to which the patient has been admitted, who shall assist him/her in evaluating the secure placement. The qualified psychiatrist or licensed psychologist shall personally visit the hospital and shall interview the patient, the patient's physician, the director, and others as he/she deems necessary and shall make a report and recommendation to the Commissioner or his/her designee.

(iii) A copy of such report shall be sent to the persons served with notice of the determination for placement in a secure facility. The Commissioner or his/her designee shall give due consideration to the arguments and supporting material presented by the respective parties as well as the report of the designated qualified psychiatrist or licensed psychologist, and shall decide the matter, upholding or reversing such secure placement.

(iv) If the decision is to confirm the need for placement in a secure facility, the determination shall be upheld. The decision of the Commissioner or his/her designee shall be communicated to the director, the patient and the patient's representative(s).

(7) Review of patient's condition.

(i) A patient placed in a designated secure facility from a criminal court pursuant to a final order of observation shall be retained at such hospital only as long as his/her condition requires placement at such hospital in accordance with the criteria set forth in subparagraph (ii) of paragraph (1), and subparagraphs (i) and (ii) of paragraph (2) of this subdivision, and if there is a substantial risk that such patient may cause physical harm to other persons, as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious harm and therefore the patient needs the close supervision provided by a secure facility.

(ii) Unless the patient has been discharged or transferred, the director of a designated secure facility who has received a patient in accordance with this subdivision shall comply with the provisions of Article 9 of the Mental Hygiene Law and shall apply, in accordance with such article, for the required periodic orders authorizing retention of involuntary patients. In addition, such director shall periodically review the need for retention in the designated secure facility of each involuntary patient and shall file a report with the Commissioner or his/her designee for each such patient at intervals of not more than 6 months setting forth reasons why the patient needs continued retention at such facility. A copy of such report shall be served on the patient and the Mental Hygiene Legal Service or the legal representative of the patient. The patient or his/her legal representative may file an objection in accordance with paragraph (5) of this subdivision.

(iii) Involuntary patients who no longer need placement in the designated secure facility but who still require involuntary care and treatment shall be transferred to another hospital in the Office of Mental Health in accordance with subdivision (b) of this Section.

(b) Transfers from a secure facility to a non-secure facility. Patients who are in the custody of the [Commissioner] Commissioner may be transferred from a secure facility to a non-secure facility by [the clinical director, after consultation with the hospital forensic committee as required in section 540.9 of this Part and compliance with the notice requirements and procedures described in section 540.10 of this Part] order of the Commissioner or his/her designee.

(c) Nothing in this Section shall be construed to limit the right of any person to seek transfer or release pursuant to Section 33.15 of the Mental Hygiene Law.

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

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

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

**Regulatory Impact Statement**

1. Statutory authority:

Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health (OMH) the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 730.40 of the Criminal Procedure Law provides that a court may issue a "final order of observation" for an individual found incompetent to stand trial, which means the charges against the individual are dropped and the individual is committed to the custody of the Commissioner of OMH for observation and possible care and treatment.

2. Legislative objectives:

Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. In 1988, Section 730.40 of the Criminal Procedure Law (CPL) was found to violate equal protection by allowing commitments to a psychiatric hospital without proof by clear and convincing evidence, as required for civil commitment of persons found incompetent to stand trial who have had the charges dropped (*Ritter v. Surlles*, 144 Misc. 2d 945). While the statute has never been amended to reflect the changes necessitated by the Ritter decision, the changes mandated by the ruling of the case have been implemented by OMH. Over the years, the manner in which OMH has implemented Ritter has been the source of a number of disputes with patients' attorneys.

3. Needs and benefits:

In February, 2005, a lawsuit was commenced as a class action in federal district court claiming that the CPL section 730.40 patients are frequently designated to go to a secure facility by OMH with no hearing or other due process available prior to the designation (*Bernstein v. Pataki*). Current OMH practices require that within 24 hours of receiving the information that an individual is a CPL section 730.40 patient, OMH will designate a facility. The district court dismissed the case and denied the plaintiffs motion for class certification in December 2005. In April 2007, the U.S. Court of Appeals for the 2d circuit vacated the decision of the district court and remanded the case for further proceedings.

While preparing for trial, the parties had settlement discussions and it was suggested by plaintiff's attorneys (plaintiffs are represented by Mental Hygiene Legal Services) that an amendment to OMH's regulations would be sufficient to settle this case. The regulation under consideration is the product of the negotiations between plaintiff's attorneys, the Attorney General's office and OMH.

The amendments still allow OMH to designate a secure facility for a CPL section 730.40 patient. However, only those patients who have open felony charges or warrants outstanding, those with pending parole revocation hearings, those with a history of arrests for violent crimes or threats to commit violent crimes against persons, or those with a history of escape or attempted escape from a psychiatric facility, if the Commissioner believes, based upon a review of available information that such individuals would meet secure retention standards, would be designated to a secure facility. The Commissioner will then have 72 hours to determine whether or not the individual meets the criteria for having a mental illness for which inpatient care and treatment are necessary. If committed, the Commissioner will also send out notices that the individual is now a civil patient and no further notices of his/her transfer or release will be given unless in compliance with Mental Hygiene Law section 33.13.

The amendments also give the patient the right to have his/her commitment to the secure facility reviewed by the hospital forensic committee (HFC) within 30 days of admission. The HFC is to review the patient's placement in the secure facility to determine whether or not he presents such a substantial risk of harm to others that he needs the close supervision provided by a secure facility. A patient placed in a secure facility due to a history of arrests for violent crimes against persons, or threats to commit such crimes, or escapes or attempted escapes from a psychiatric facility is also entitled to object to his/her placement in the secure facility after a 30-day review period has elapsed. Such an objection must be made within 10 days of the 30-day periodic review.

The amendments call for the director of the facility to send to the Commissioner or his designee, the patient and his/her representative any written arguments and supporting documentation concerning the decision to admit the patient to a secure facility. Once an objection is filed, the Commissioner must designate a qualified psychiatrist or licensed psychologist to evaluate the patient and make a recommendation to the Commis-

sioner. If the decision is confirmed, it shall be communicated to the director, the patient and the patient's representative.

Patients placed in a secure facility will be retained there only as long as he/she meets the criteria of this section to be so retained. The director of the secure facility is also required to review the need for retention in a secure facility at intervals of not more than six months, explaining the need for continued retention.

It should be noted that patients initially designated to a non-secure facility are still subject to transfer to a secure facility using 14 NYCRR Part 57, should that individual meet the requirements of that transfer regulation.

4. Costs:

No additional costs are anticipated as a result of the adoption of this regulation.

5. Local government mandates:

These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork:

This rule should not substantially increase the paperwork requirements of those affected.

7. Duplication:

These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives:

The alternative to implementing this regulation would be to go forward with the litigation. Although OMH believes its position is defensible, losing the litigation could potentially result in an order which would severely constrict or eliminate the ability of the Commissioner of OMH to admit directly to secure facilities patients remanded to his custody under CPL section 730.40, as well as an award of substantial attorney fees. Since the agency believes it can implement this regulation with no additional costs to OMH, the continuation of the litigation was rejected as inadvisable.

9. Federal standards:

The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

The regulatory amendments could be implemented immediately upon adoption.

**Regulatory Flexibility Analysis**

Because it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

**Job Impact Statement**

A Job Impact Statement is not submitted with this notice because it merely clarifies the placement process for individuals who have open felony charges or warrants outstanding, who have pending parole revocation hearings, who have a history of escape or attempted escape from a psychiatric facility and who, the Commissioner believes, based upon a review of available information would meet secure retention standards. Therefore, it is evident that this proposed rule will have no adverse impact on jobs and employment opportunities.

**Action taken:** Amendment of sections 1950.8 and 1950.20 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 1230-j

**Subject:** Adoption of a schedule of rates, fees and charges.

**Purpose:** To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve covenants with bondholders.

**Text or summary was published** in the notice of emergency/proposed rule making, I.D. No. NFW-13-08-00006-EP, Issue of March 26, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** William B. Bolents, Director of Administrative Services, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14303, (716) 283-9770, e-mail: bbolents@nfwb.org

**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.

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## Division of Probation and Correctional Alternatives

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### NOTICE OF ADOPTION

**Preliminary Procedure for PINS Probation Intake and Diversion Services**

**I.D. No.** PRO-10-08-00002-A

**Filing No.** 599

**Filing date:** June 17, 2008

**Effective date:** Oct. 1, 2008

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

**Action taken:** Repeal of Part 357, addition of new Part 357 and amendment of Part 354 of Title 9 NYCRR.

**Statutory authority:** Executive Law, art. 12, sections 243(1) and 256(1); Family Court Act, section 735(a); Social Services Law, section 34-a(4)(b)

**Subject:** Preliminary procedure for PINS probation intake and diversion services.

**Purpose:** To reflect statutory changes and promote consistent application of law and best practices.

**Substance of final rule:** These regulatory amendments would replace the former Part 357 Intake for Article 7 and delete references as to Article 7 cases in Part 354 so that there will be one rule related to Persons In Need of Supervision (PINS). These regulatory amendments to Part 357 were developed by a DPCA working committee comprised of DPCA staff and local probation department representation across the state of all COPA regions, and including all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. The existing Part 357 Intake for Article 7 was last revised in 1986, and was in effect made defunct by the repeal and reenactment of Family Court Act Section 735 effective April 2005. This rule was applicable to jurisdictions with approved PINS plans and Part 354 governed jurisdictions without an approved PINS plan. In light of recent statutory changes creating one procedural process for handling of PINS, the work of the subcommittee was significant, requiring a near complete rewriting of Part 357. In drafting new rule language, the committee's primary objectives has been to: 1) ensure conformity with all current laws, most notably the 2000 and 2001 PINS to 18 laws and the 2005 PINS Diversion and Detention Reform law (specifically Chapter 596 of the Laws of 2000, Chapter 383 of the Laws of 2001, and Chapter 57 of the Laws of 2005); 2) reflect best practice as it has evolved over the past 20 years; 3) incorporate evidence based practice that has come to the forefront of probation practices in recent years; and 4) integrate statute and best probation practice into a single document organized according to the flow of cases through preliminary procedure.

In meeting statutory requirements of Family Court Act Article 7, these regulatory amendments eliminate former suitability language, given that all PINS cases are now considered to be suitable for diversion services. Amendments articulate the requirements of these aforementioned PINS

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## Niagara Falls Water Board

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### NOTICE OF ADOPTION

**Adoption of a Schedule of Rates, Fees and Charges**

**I.D. No.** NFW-13-08-00006-A

**Filing No.** 573

**Filing date:** June 11, 2008

**Effective date:** June 11, 2008

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

laws revising Article 7 of the Family Court Act, and require directors to issue policies and procedures that address statutory requirements, including timeframes for case initiation and criteria for determining “diligent efforts” and “no substantial likelihood” standards. Other statute requirements specified include: the provision of information at the first point of contact with the parties; diligent attempts to engage the youth and family, including documentation; providing an immediate response to families in crisis; identifying and utilizing appropriate alternatives to detention; and attempting to divert youth from Family Court. For school based complaints, these amendments articulate the requirement to review steps taken by the school and attempt to engage the school in further attempts if deemed beneficial to the youth. These regulatory amendments incorporate language regarding termination of diversion efforts, and the ability to continue to provide diversion services after filing of a petition where it is determined that the youth and family will benefit from further attempts to prevent the youth from entering foster care. Statutory requirements for referral for petitions are incorporated, including the “no substantial likelihood” standard. The pre-requisites of parental cooperation and participation are delineated for instances where the case has been terminated because of the failure of the parent(s)/guardian(s).

#### Section 357.1 Definitions.

These regulatory amendments eliminate most of the definitions of the old Part 357 rule, and define nineteen terms not previously defined under the old Intake rule. Some of these terms have come into widespread use in probation practice over the past 20 years, others are anchored in the 2005 PINS law, and others originate from evidence-based practice. For example, more and more counties are involved in pre-diversion services, and so a new definition for pre-diversion services distinguishes these services from “information only” and “diversion services” work. To improve the system’s ability to communicate about and distinguish among different types of services, the revised Part 357 rule contains new definitions for intervention service, accountability measure, and control measure. Other new definitions have been developed for: actuarial risk, case plan, complainant, conference, diligent efforts, diversion services, evidence-based practice, no substantial likelihood, Person In Need of Supervision (PINS), potential respondent, services, referred for petition, risk assessment, successfully diverted, runaway, and youth at risk of placement.

#### Section 357.3 and 357.4 - Applicability and Jurisdiction.

The changes to Part 357 address applicability and jurisdictional issues. They clarify that this Part applies to probation departments responsible for the conducting of preliminary procedure, in whole or in part, either because they are the lead agency, or because they are responsible to provide a portion of preliminary procedure. They also provide guidance regarding cases where the child lives in one county but the behavior occurred in a different county, and provides a mechanism in such instances in order to address provision of services for moderate and high risk youth by ensuring access to such services in the county of residence.

#### Section 357.5 - General Requirements for PINS Preliminary Procedure.

Issues related to school are addressed throughout the revised rule. Under the general requirements section, the revised rule specifies that parent-initiated complaints of ungovernability/incorrigibility may be made for youth who are not attending school and are beyond the compulsory education age. For school complaints, where a parent refuses to cooperate, clarifies that an educational neglect report may be made. For special-education students, the revised rule requires probation to gather information from the Committee on Special Education as part of preliminary procedure, and that, prior to referring the matter for petition, documentation that a Manifestation Determination hearing was held to determine whether a special education youth’s behaviors are intentional and ongoing and not related to the youth’s disability. Finally, regulatory amendments address the role of probation to establish procedures by which schools report to probation steps taken to improve youth attendance and conduct, and to determine whether acceptable efforts have been made to improve youth attendance and conduct.

#### Section 357.6 - Probation Intake.

The probation intake section reaffirms eligibility requirements, that is, in order to accept a PINS complaint, the alleged behavior must meet the criteria set forth in Article 7 of the Family Court Act. It recognizes pre-diversion services as an alternative to pursuing a PINS complaint. In cases where the complainant indicates that the youth is a runaway, it requires probation to advise the parent of the need to file a missing person report, and encourages probation to attempt to contact youth for the purpose of engaging the youth in diversion services. It clarifies that, where feasible, at least one joint intake conference in real time with all parties should be held.

It underscores that parents need to be advised of a potential bar to filing a petition where there is failure to consent or to participate in diversion services (DPCA plans to develop a model advisement form for use at local option). For school complaints, where a parent refuses to cooperate, it clarifies that an educational neglect report may be made.

#### Section 357.7 - Diversion Services.

The regulatory amendment requires an initial case plan to be developed within 30 calendar days of case initiation, and reassessment to be conducted 60 days later and every 90 calendar days thereafter. Case plans must be based initially on assessment results, updated periodically in accordance with reassessment results, and focus on the priority areas for intervention to resolve the presenting problem. Further, these amendments require that referrals for service incorporate the results of the actuarial risk assessment to target the specific underlying dynamic risk factors related to the PINS complaint. Further, they clarify that in addition to intervention services, accountability and control measures may be applied as part of diversion services, and that electronic monitoring may be used only with director consent and upon specific court order.

#### Section 357.8 - Assessment, Case Planning, and Reassessment.

New in these regulatory amendments are requirements for actuarial risk screening at intake in order to triage cases, and consideration for prompt termination of diversion efforts with minimal or no intervention services where youth present as low risk for continuing in the PINS behaviors. Consistent with the actuarial screening and triage functions at intake, the rule language requires as part of diversion services a full assessment of all youth who are at moderate or high risk for continued PINS behavior, and directs that diversion services be prioritized to higher risk youth.

#### Section 357.9 - Petition To Court.

The regulatory amendments clarify that probation may file a petition in instances where the parent is prohibited from filing after diversion is terminated due to their lack of cooperation and the youth’s behavior remains problematic as a result. They also add that once a petition is filed diversion efforts may continue pending court action. New language outlines all of the legal requirements for filing that must be addressed (DPCA and the rule drafting workgroup have developed a model PINS petition report to the court for use at local option).

#### Section 357.10 - Return From Court.

This section reaffirms that probation is to notify the court of the status at case closing when it closes a diversion case that was returned from the court for diversion services.

Sections 357.11, 357.12, and 357.13 – Pre-Diversion Case Designation Requirements and Criteria, Case Closing Requirements, and Case Record Keeping Requirements.

For pre-diversion services, these regulatory amendments require that at minimum, a record be maintained of the date of receipt of the complaint, and a description of pre-diversion services either referred to or directly provided. Where preliminary procedure was commenced, the case closing options have been modified to reflect the current options under the law. New language delineates the required documents and other information to be included in the case record.

#### Part 354

Necessary amendments have been made to Part 354 to delete reference to Article 7 cases or PINS language in order that there is now one rule (Part 357) governing these matters. Other minor technical amendments are further made as necessitated by removal of such language.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 357.1(b), (d), (e), (g), (h), (m), (t), (v), (w), 357.2, 357.4, 357.5(d), (e)(2), 357.6(b)(3), (e), 357.8(a)(1), 357.9(c) and 357.12(e)(4).

**Text of rule and any required statements and analyses may be obtained from:** Linda J. Valenti, Counsel, Division of Probation and Correctional Alternatives, 80 Wolf Rd., Suite 501, Albany, NY 12205, (518) 485-2394

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

Nonsubstantive changes made in sections 357.1(b), (d), (e), (g), (h), (m), (t), (v), (w), 357.2, 357.4, 357.5(d), (e)(2), 357.6(b)(3), (e), 357.8(a)(1), 357.9(c) and 357.12(e)(4) do not necessitate revision of the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

#### **Assessment of Public Comment**

The Division of Probation and Correctional Alternatives (DPCA) received four written comments relative to the proposed regulatory revision to Parts 354 and 357 governing preliminary procedure for Family Court Act (FCA) Article 7 during the official public comment period and one

shortly thereafter, which DPCA also reviewed and considered. These comments were carefully weighed and resulted in DPCA clarifying certain language and incorporating several of their suggestions to improve the content and quality of these proposed regulatory changes, and to achieve better probation practice in this area.

Public comments were received from three Probation Departments: Oneida, Suffolk, and New York City, as well as the Council of Probation Administrators (COPA) and the Office of Children and Family Services (OCFS). All five sought clarification of certain Rule definitions and/or raised particular issues with respect to consistency with other state law provisions.

Four of the five comments proposed specific technical changes with respect to definitional language. DPCA concurred with many of these recommendations and incorporated the suggestions where appropriate. For example, the definitional term of "actuarial risk" removed language providing no intervention services with respect to lower risk cases, as DPCA agreed that state law requires diversion services and in actuality, at a minimum, referrals are made on such cases. However, DPCA disagreed with OCFS' questioning use of the word "re-offending". Family Court Act Section 712(a) defines PINS to include youth less than 18 years of age who are truant, incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of a parent/other person legally responsible/lawful authority or who violates the provisions of Penal Law Section 221.05 (unlawful possession of marijuana). PINS are viewed as status offenders and re-offending is not exclusive to criminal behavior. As a result of other comments received, references in other Rule sections were similarly modified to be consistent, including the definitional term of "diligent efforts". While OCFS asserted that the latter term is not helpful, they offer no alternative language and probation departments support our definition and view it providing needed guidance in this area. Additionally the definitional term of "control measure" was modified to reflect that the graduated sanction of electronic monitoring would occur by court order. DPCA also removed the reference to supervision as this rule pertains to preliminary procedure. Further, the definitional term "runaway" has been clarified by incorporating the definition of runaway suggestions of COPA with minor edits. DPCA did not embrace the OCFS suggestion as their proposed language reflects the Runaway and Homeless Youth Act enacted in 1978 and is not viewed sufficient in scope in 2008 to cover what is needed with respect to Family Court Act Article 7. The regulatory definition is more complete and better defines actions giving rise to being considered a runaway for diversion purposes. With respect to other definitions, DPCA also refined the definition of "no substantial likelihood" consistent with COPA's request, clarified the definition of "complainant", added a new definitional term "complaint" for clarity purposes, and slightly modified the term "protective factor" to be clearer as to our intent. DPCA disagreed with OCFS' suggestion that the term "case plan" address how protective factors will be identified. As this is a definition and the risk assessment instrument itself addresses this and other rule provisions explain how they will be identified and utilized, DPCA believes that it is unnecessary to do so and no probation practitioner has expressed the need to clarify or expand upon this point. Similarly, DPCA did not believe it necessary to modify the term "control measure" to explain how they will be implemented.

While two comments requested deletion of language in the definitional term "risk assessment", which requires a validated protocol be approved by the State Director of Probation and Correctional Alternatives, DPCA insists on its retention. DPCA believes that it is essential that a risk assessment instrument be validated to promote good professional practice and serve the interests of youth, and as the oversight agency of probation services throughout New York State, it is appropriate that DPCA approve usage of any instrument to ensure that the instrument is validated, reliable, and ensures uniformity in terms of what is measured (*i.e.*, risk of recidivism). This guarantees that critical information is collected so that state-wide collection of key data is secured and evaluated. While NYC Probation questioned DPCA's "institutional expertise to assess or approve such protocols" DPCA has always recognized the need to have research expertise in this area and has worked extensively with the Division of Criminal Justice Services (DCJS) who provides host agency services to us in the area of research due to merger of agency services several years ago. Through this ongoing interagency collaboration, DPCA previously issued a Request for Proposal reviewed by appropriate research staff of various state agencies to develop and implement a validated risk and needs instrument for New York State's juvenile justice population, including New York City. Feedback was incorporated from local jurisdictions, the instrument piloted in several jurisdictions. As to the final instrument and proto-

cols, preliminary and long-term validation studies were conducted on the instrument, commonly referred to as YASI. YASI has been offered to local probation departments to promote evidence-based practices and has been well-received. Presently fifty-five jurisdictions in New York State are now utilizing YASI, which attests to overwhelming local probation receptivity of YASI meeting their needs. It should be noted that twenty-two other states including large metropolitan jurisdictions (*i.e.*, Chicago, San Francisco, Atlanta) utilize a YASI-like instrument. Therefore probation experience in New York and other state's success refute NYC's contention that different jurisdictions throughout the state have varying needs that often cannot all be met by a single "one size fits all" instrument. With respect to OCFS inquiry on this subject, it should be reiterated that DPCA is not mandating YASI throughout the state, but rather the use of a fully validated risk and need instrument that measures the risk of recidivism.

As to jurisdiction, DPCA incorporated COPA's suggestion with respect to transfer of diversion services to make it discretionary rather than mandatory where the youth resides in one county, but the PINS behavior occurred in another county. However, we retained language that once sought by the sending county transfer shall be accepted by the receiving county to promote diversion efforts and avoid inherent problems caused by making acceptance optional. DPCA revised rule language as to intake actions for school-based complaints where parents refuse to consent. To address some of COPA's concerns, DPCA amended existing language to clarify that probation may request the court to direct either parent/guardian to sign a release of information for school records, however we also added language that the court on its own volition may direct such release. While COPA suggested that language reflect probation's authority to recommend that the school pursue an educational neglect report, in view that this decision should be based on the totality of circumstances and is not always proper solely where consent has not been forthcoming, DPCA refined language that this may be done "where appropriate". Lastly, DPCA embraced COPA's suggestion with respect to petitions to court to delete extraneous language as to when an educational neglect report may be filed.

While New York City probation voiced that there should be consistency as to "definitions, expectations, agreement for use of actuarial risk screening tools" with respect to PINS matters regardless whether probation or Social Services is the lead agency, they appreciated that DPCA has taken steps in this area to "clean up" our regulations and expressed that DSS "should do the same." As DPCA rules govern probation departments, our agency has no authority over DSS regulations.

As to other comments made by OCFS, DPCA added language to refer to effective community-based services in the Objective rule section, clarified what was meant by a "complaint" distinguishing it from a petition to avoid confusion, and narrowed language as to incorrigibility/ungovernability behavior to refer to conduct "in school" with respect to a youth who is a special education student and gathering information from the Committee on Special Education. However, DPCA disagreed with OCFS' assertion that reference to community-based in the definition of "intervention services" is in need of revision because this language embraces both private and public agency services within a community and is not viewed as pertaining solely to private not-for-profit providers of services as asserted by OCFS. Further, while DPCA modified its Rule summary to delete language which was not applicable, other remaining issues expressed by OCFS as to rule content did not appear appropriate and/or necessary.

Lastly, Oneida County Probation Department expressed support of Rule changes as being in order with their "current practices" as well as their "philosophy and efforts to reduce inappropriate formal PINS actions in Family Court." While they expressed their schools have been resistant as to Manifestation hearings on Special Education students undergoing diversion services, any change in educational plan triggers such a hearing and the rights and protections of special education students is necessitated by federal law and state law. Our rule language in this area is discretionary and reflects good probation practice. The probation director forwarded our proposed rule changes to their Children's Coordinated Service Initiative Tier II local partners to reinforce this issue with schools.

In conclusion, many changes were technical Rule amendments which DPCA incorporated or otherwise refined into the final rule. Many helped avoid confusion and clarify certain issues; others were made to reflect statutory law as to delivery of services. None of these changes substantively changed the regulatory content of these Rules. At an April 2008 State Probation Commission meeting, DPCA received support of the Commission members after a presentation was made of the proposed rule and DPCA communicated public comments received as of that date and anticipated changes.

## Public Service Commission

### NOTICE OF ADOPTION

#### Transfer of Water Supply Assets by Hopewell Gardens Apartments, LLC, et al.

**I.D. No.** PSC-38-07-00007-A  
**Filing date:** June 12, 2008  
**Effective date:** June 12, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order for the transfer of water supply assets of Hopewell Gardens, Inc., to Hopewell 376 Water, LLC.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 8, 89-c(1) and 89-h

**Subject:** Transfer of water supply assets.

**Purpose:** To approve the transfer of water plant assets of Hopewell Gardens, Inc. to Hopewell 376 Water, LLC.

**Substance of final rule:** The Commission adopted an order approving the joint petition of Hopewell Gardens Apartments, LLC; Hopewell Gardens, Inc.; and Hopewell 376 Water, LLC for the transfer of water supply assets from Hopewell Gardens, Inc. to Hopewell 376, LLC located in the Town of East Fishkill, Dutchess County, 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-W-0923SA1)

### NOTICE OF ADOPTION

#### Transfer of Property between Consolidated Edison Company of New York, Inc. and Village Academies Network Inc.

**I.D. No.** PSC-49-07-00010-A  
**Filing date:** June 12, 2008  
**Effective date:** June 12, 2008

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

**Action taken:** On April 23, 2008, the Public Service Commission denied the joint petition of Consolidated Edison Company of New York, Inc. & Village Academies Network Inc. for the transfer of certain real property located at 32-42 W. 125th St. and 35-39 W. 124th St., New York, NY.

**Statutory authority:** Public Service Law, section 70

**Subject:** Transfer of property.

**Purpose:** To deny the transfer of certain real property located at 32-42 W. 125th St. and 35-39 W. 124th St., New York, NY.

**Substance of final rule:** The Commission denied the joint petition of Consolidated Edison Company of New York, Inc. and Village Academies Network Inc. for the transfer of certain real property located at 32-42 West 125th Street and 35-39 West 124th Street, New York, New York.

**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-M-1316SA1)

### NOTICE OF ADOPTION

#### Routine Water Company Tariff Schedules

**I.D. No.** PSC-04-08-00013-A  
**Filing date:** June 12, 2008  
**Effective date:** June 12, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order authorizing the commission secretary to approve the conversion of water company paper tariffs to electronic tariff schedules.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 8, 89-c(1) and (10)

**Subject:** Delegation of authority to the secretary for approval of routine water company tariff schedules.

**Purpose:** To approve the delegation of authority.

**Substance of final rule:** The Commission adopted an order delegating the Secretary authorization to approve the conversion of water company paper tariffs to electronic tariffs with certain rate changes, such as inclusion of a late payment charge, returned check charge, a fixed level for restoration of service charges, and certain waivers, 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-W-0929SA1)

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

#### Petition for the Submetering of Electricity

**I.D. No.** PSC-27-08-00005-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Accurate Energy Group, to submeter electricity at 140 E. 63rd St., also known as Barbizon 63/Condominium, 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 Accurate Energy Group, to submeter electricity at 140 E. 63rd St., New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Accurate Energy Group, to submeter electricity at 140 East 63rd Street also known as Barbizon 63/Condominium, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(08-E-0573SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Petition for the Submetering of Electricity**

**I.D. No.** PSC-27-08-00006-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 1240 First Avenue LLC, to submeter electricity at 400 E. 67th 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 1240 First Avenue LLC, to submeter electricity at 400 E. 67th St., New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 1240 First Avenue LLC, to submeter electricity at 400 East 67th 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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(08-E-0617SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Expansion of Con Edison's ESCO Referral Program to Include New Customers**

**I.D. No.** PSC-27-08-00007-P

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

**Proposed action:** The commission is considering whether, and to what extent, it should direct Consolidated Edison Company of New York, Inc., (Con Edison or company) to expand its ESCO referral program to include customers who contact the company for new service.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1) and 66(1)

**Subject:** Expansion of Con Edison's ESCO referral program to include new customers.

**Purpose:** To determine whether and to what extent the commission should direct Con Edison to expand its ESCO referral program.

**Substance of proposed rule:** The Commission is considering whether, and to what extent, it should direct Consolidated Edison Company of New

York, Inc. (Con Edison or Company) to expand its ESCO referral program to include customers who contact the Company for new service. In making its determination, the Commission will take into consideration the report on the feasibility of providing new customer referrals to ESCOs, submitted by Con Edison on May 23, 2008 in accordance with the Commission's March 25, 2008 Order in Case 07-E-0523, any amendments to the report, any comments made by the parties, the record in this proceeding, and such other information as the Commission may deem appropriate. The Commission may accept, reject, or modify, in whole or in part, any proposals made by the Company in its report or any proposals that may be developed there from, and it may also consider related matters.

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

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

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

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

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

(07-E-0523SA3)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Petition for the Submetering of Electricity**

**I.D. No.** PSC-27-08-00008-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by United Development Corporation, to submeter electricity at 370 Rte. 13, Cortlandville, 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 United Development Corporation, to submeter electricity at 370 Rte. 13, Cortlandville, 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 United Development Corporation, to submeter electricity at 370 Route 13, Cortlandville, New York, located in the territory of Niagara Mohawk Power Corporation.

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

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

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

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

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

(08-E-0608SA1)

## Department of State

### EMERGENCY RULE MAKING

#### Installation of Pool Alarms in Residential and Commercial Swimming Pools

**I.D. No.** DOS-02-08-00001-E

**Filing No.** 585

**Filing date:** June 13, 2008

**Effective date:** June 13, 2008

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

**Action taken:** Addition of Part 1228 to Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 377 and 378

**Finding of necessity for emergency rule:** Preservation of public safety.

**Specific reasons underlying the finding of necessity:** This rule is adopted as an emergency measure to preserve public safety, to reduce the number of accidental drownings in swimming pools, and because time is of the essence. This rule implements the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, which requires that the New York State Uniform Fire Prevention and Building Code (the Uniform Code) provide that any residential or commercial swimming pool constructed or substantially modified after December 14, 2006 (except hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. The Introducer's Memorandum in Support of the bill that added paragraph (b) of subdivision (14) of section 378 of the Executive Law (Chapter 450 of the Laws of 2006) states, in pertinent part, that "drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nationwide, and the third leading cause of injury-related deaths of children in New York. . . . (T)echnological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings." The exception for hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are added by this rule pursuant to new paragraph (c) of Executive Law section 378, which was added by Chapter 75 of the Laws of 2007.

At its meeting held on June 11, 2008, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve the public safety and to reduce the number of accidental drownings in swimming pools, and establishing the date of filing of this rule as the effective date of this rule is necessary to protect health, safety and security, and to reduce the number of accidental drownings in swimming pools.

**Subject:** Installation of pool alarms in residential and commercial swimming pools.

**Purpose:** To implement Executive Law, section 378(14)(b)-(c).

**Text of emergency rule:** Title 19 NYCRR is amended by adding a new Part 1228 to read as follows:

*Part 1228. Additional Uniform Code Provisions.*

*Section 1228.1. Additional Uniform Code Provisions.*

*The provisions set forth in this Part 1228 are part of the New York State Fire Prevention and Building Code (the "Uniform Code"). The provisions set forth in this Part 1228 are in addition to, and not in limitation of, the provisions set forth in Parts 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, and 1227 of this Title and in the publications referred to in Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, and 1227 of this Title.*

*Section 1228.2. Swimming pool alarms.*

*(a) Purpose. This section is intended to implement the provisions of Executive Law section 378(14)(b), as added by Chapter 450 of the Laws of 2006, and Executive Law section 378(14)(c), as added by Chapter 75 of the Laws of 2007.*

*(b) Definitions. For the purposes of this section, the following words and terms shall have the following meanings:*

*(1) The word "approved" means approved by the code enforcement official responsible for enforcement and administration of the Uniform Code as complying with and satisfying the purposes of this section.*

*(2) The term "commercial swimming pool" means any swimming pool (as defined in paragraph (4) of this subdivision) that is not a residential swimming pool (as defined in paragraph (3) of this subdivision).*

*(3) The term "residential swimming pool" means a swimming pool (as defined in paragraph (4) of this subdivision) which is situated on the premises of a detached one- or two-family dwelling not more than three stories in height with separate means of egress; a multiple single-family dwelling (townhouse) not more than three stories in height with separate means of egress; a one-family dwelling converted to a bed and breakfast; a community residence for 14 or fewer mentally disabled persons, operated by or subject to licensure by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities; a one- or two-family dwelling operated for the purpose of providing care to more than two but not more than eight hospice patients, created pursuant to Article 40 of the Public Health Law, and defined as a hospice residence in section 4002 of said Law; a manufactured home; a mobile home; or a factory manufactured dwelling unit.*

*(4) The term "swimming pool" means any structure, basin, chamber or tank which is intended for swimming, diving, recreational bathing or wading and which contains, is designed to contain, or is capable of containing water more 24 inches (610 mm) deep at any point. This includes in-ground, above-ground and on-ground pools; indoor pools; hot tubs; spas; and fixed-in-place wading pools.*

*(5) The term "substantial damage" means damage of any origin sustained by a swimming pool whereby the cost of restoring the swimming pool to its before damaged condition would equal or exceed 50 percent of the market value of the swimming pool before the damage occurred.*

*(6) The term "substantial modification" means any repair reconstruction, rehabilitation, addition, or improvement of a swimming pool, the cost of which equals or exceeds 50 percent of the market value of the swimming pool before the repair, rehabilitation, addition, or improvement is started. If a swimming pool has sustained substantial damage, any repairs are considered to be a substantial modification regardless of the actual repair work performed.*

*(c) Pool alarms. Except as otherwise provided in subdivision (e) of this section, each residential swimming pool installed, constructed or substantially modified after December 14, 2006 and each commercial swimming pool installed, constructed or substantially modified after December 14, 2006 shall be equipped with an approved pool alarm which:*

*(1) is capable of detecting a child entering the water and giving an audible alarm when it detects a child entering the water;*

*(2) is audible poolside and at another location on the premises where the swimming pool is located;*

*(3) is installed, used and maintained in accordance with the manufacturer's instructions;*

*(4) is classified by Underwriters Laboratory, Inc. (or other approved independent testing laboratory) to:*

*(i) reference standard ASTM F2208, entitled "Standard Specification for Pool Alarms," as adopted in 2002 and editorially corrected in June 2005, published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or*

*(ii) reference standard ASTM F2208, entitled "Standard Specification for Pool Alarms," as adopted in 2007, published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428; and*

*(5) is not an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation.*

*(d) Multiple pool alarms. A pool alarm installed pursuant to subdivision (c) of this section must be capable of detecting entry into the water at any point on the surface of the swimming pool. If necessary to provide detection capability at every point on the surface of the swimming pool, more than one pool alarm shall be installed.*

*(e) Exemptions.*

*(1) A hot tub or spa equipped with a safety cover classified by Underwriters Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F1346 (2003), entitled "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs," published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, shall be exempt from the requirements of subdivisions (c) and (d) of this section.*

*(2) Any swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover classified by Underwriters Laboratory,*

Inc. (or other approved independent testing laboratory) to reference standard ASTM F1346 (2003), entitled "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs," published by ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, shall be exempt from the requirements of subdivisions (c) and (d) of this section.

#### Section 1228.3. Carbon monoxide alarms.

Former section 1228.3 was repealed by its own terms on January 1, 2008. The provisions relating to carbon monoxide alarms contained in Parts 1220 to 1227, and in the publications incorporated by reference in Parts 1220 to 1227, are effective on and after January 1, 2008.

**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. DOS-02-08-00001-EP, Issue of January 9, 2008. The emergency rule will expire August 5, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Joseph Ball, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, e-mail: joseph.ball@dos.state.ny.us

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY.

Subdivision 1 of Executive Law section 377 authorizes the State Fire Prevention and Building Code Council to periodically amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code").

Subdivision 1 of Executive Law section 378 directs that the Uniform Code shall address standards for safety and sanitary conditions.

Paragraph (b) of subdivision (14) of Executive Law section 378 directs that the Uniform Code shall provide that residential and commercial swimming pools constructed or substantially modified after December 14, 2006 shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. This rule making adds provisions that require the installation of pool alarms.

Paragraph (c) of subdivision (14) of Executive Law section 378 provides that hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers shall not be required to be equipped with pool alarms. This rule provides for this exception.

##### 2. LEGISLATIVE OBJECTIVES.

The memorandum accompanying the bill which added paragraph (b) to subdivision (14) of Executive Law section 378 included the following justification:

"According to the National Center for Injury and Control (NCIPC), drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nation wide, and the third leading cause of injury-related deaths of children in New York. NCIPC data also shows [sic] that twenty-six infants and children under fourteen drowned in New York State, in 2002 alone. Local laws often require barriers for residential pools, but technological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings."

The Legislative objective sought to be achieved by pool alarm provisions added by this rule is a reduction in the number of accidental drownings in swimming pools in this State.

##### 3. NEEDS AND BENEFITS.

This rule making amends the Uniform Code by adding new provisions that require residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with approved pool alarms. By requiring the use of a device that provides rapid and automatic detection of an unintentional, unsupervised or accidental entry of a child into a pool, this rule should provide the benefit intended by the Legislature: a reduction in the number of accidental drownings. This rule provides that the required pool alarms must be capable of detecting a child entering the water; must be capable of giving an audible alarm; must be audible poolside and at another location on the premises where the swimming pool is located; must be installed, used and maintained in accordance with the manufacturer's instructions; and must be classified by Underwriter's Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F2208, entitled "Standard Specification for Pool Alarms."

A hot tub or spa that is equipped with a safety cover that complies with ASTM F1346 (2003), entitled "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming

Pools, Spas and Hot Tubs," published by ASTM International, will not be required to be equipped with a pool alarm. A swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover that complies with ASTM F1346 will not be required to be equipped with a pool alarm. Section 1.1 of ASTM F1346 (2003) provides that "This specification establishes requirements for safety covers for swimming pools, spas, hot tubs, and wading pools (hereinafter referred to as pools, unless otherwise specified). When correctly installed and used in accordance with the manufacturer's instructions, this specification is intended to reduce the risk of drowning by inhibiting the access of children under five years of age to the water." Therefore, these exceptions to the pool alarm requirement, which reflect the provisions of new paragraph (c) of Executive Law section 378(14), allow, in the stated applications, the use of a cover designed to inhibit access to the water in lieu of an alarm designed to detect actual entry into the water.

##### 4. COSTS.

The initial capital costs of complying with the pool alarm provisions added by this rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pool, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of operating and maintaining the safety cover, which are anticipated to be modest.

While this rule provides that a pool (other than a hot tub or spa) equipped with an automatic power safety cover need not be equipped with a pool alarm, this rule does not require the installation of an automatic power safety cover: the owner of a pool (other than a hot tub or spa) may comply with this rule by installing either a pool alarm or an automatic power safety cover.

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of this rule, except as follows:

First, if the State or any local government constructs, installs or substantially modifies a swimming pool, the State or such local government, as the case may be, will be required to install a pool alarm.

Second, since this rule adds provisions to the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. However, the need to verify the installation of required pool alarms will not have a significant impact on the permitting process or inspection process.

##### 5. PAPERWORK.

This rule will not impose any new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

##### 6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006 will be required to comply with the pool alarm provisions added by this rule.

Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code; since this rule adds provisions to the Uniform Code, the aforementioned local governments will be responsi-

ble for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

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

#### 7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

#### 8. ALTERNATIVES.

New paragraph (b) of subdivision (14) of section 378 of the Executive Law requires that the Uniform Code provide that any residential or commercial swimming pool constructed or substantially modified after December 14, 2006 (the effective date of said paragraph) shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm.

While the use of personal immersion alarms may provide supplemental protection in certain situations, such devices would not protect a child who was not wearing the device when he or she entered the water. Therefore, this rule provides that an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation will not satisfy the requirements of the new provisions.

No other significant alternatives to the pool alarm provisions to be added by this rule were considered, since it appears that no such alternative would satisfy the specific directive of the Legislature as set forth in Executive Law section 378(14)(b)-(c).

#### 9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule.

#### 10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with the pool alarm provisions added by this rule in the normal course of operations, either as part of the installation or construction of a new swimming pool or the substantial modification of an existing swimming pool.

### **Regulatory Flexibility Analysis**

#### 1. EFFECT OF RULE:

The new section 1228.2 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006. The Department of State has not been able to estimate the number of small businesses and local governments that own or operate swimming pools, but it is believed that a majority of the non-residential swimming pools in this State are owned or operated by small businesses or local governments. Small businesses that install construct or modify swimming pools and small businesses that sell swimming pool alarms will also be affected by this rule.

Since this rule adds provisions to the Uniform Fire Prevention and Building Code (the "Uniform Code"), each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimate that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

#### 2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install, use and maintain swimming pool alarms and carbon monoxide alarms in accordance with the rule's provisions. In cases where the installation, construction or substantial modification of a swimming pool involves the issuance of a building permit, the local government responsible for administering and enforcing the Uniform Code will be required to consider the pool alarm requirements of this rule when reviewing plans and inspecting work.

#### 3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

#### 4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200.

Larger pools or irregularly shaped pools may require more than one such alarm. In the case of large, complex shaped pools, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, com-

plex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variations in the initial capital cost of complying with the rule or in the annual cost of complying with the rule are likely to be attributable to variations in the size and configuration of the swimming pools to be protected, and not to the type or size of the small businesses and local governments that own the pools. To the extent that larger businesses and larger local governments may tend to own larger swimming pools, or more than one swimming pool, the total costs of compliance would be higher for larger entities and larger local governments.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. Except in the case of very large or complex shaped swimming pools, which may require a more sophisticated alarm system, this rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

#### 6. MINIMIZING ADVERSE IMPACT:

The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing several types of pool alarms on the market to be used. In the case of hot tubs and spas that fall within the Uniform Code's definition of "swimming pool," the rule minimizes any potential adverse impact by providing that a hot tub or spa that is equipped with a safety cover need not be equipped with a pool alarm. Further, the rule provides that other swimming pools equipped with automatic power safety covers need not be equipped with a pool alarm.

The applicable statute (Executive Law section 378(14)(b)-(c)) requires that this rule apply to all swimming pools constructed or substantially modified after December 14, 2006 (except for hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers). The statute does not authorize the establishment of differing compliance requirements or timetables with respect to swimming pools owned or operated by small businesses or local governments. Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are exempt from this rule, as required by Executive Law section 378(14)(c); providing other exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b)-(c) and would endanger public safety.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

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 posted on the Department's website and 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 emergency adoption of this rule in a future edition of *Building New York*. In addition, the Department of State will post a notice of the emergency adoption of this rule, and 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 the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, as added by Chapter 450 of the Laws of 2006 and Chapter 75 of the Laws of 2007, respectively, by adding provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") requiring that a pool alarm be installed in any residential or commercial swimming pool (other than a hot tub or spa equipped with a safety cover or other pool equipped with an automatic power safety cover) that is installed, constructed or substantially modified after December 14, 2006. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

## 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements. The rule will impose the following compliance requirements:

All residential and all commercial swimming pools that are installed, constructed or substantially modified after December 14, 2006 will be required to be equipped with an acceptable pool alarm that is capable of detecting a child entering the water and of giving an audible alarm, and such alarms will be required to be installed, used and maintained in accordance with the manufacturer's instructions. (Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers will not be required to be equipped with pool alarms.) No professional services are likely to be needed in a rural area in order to comply with such requirements.

## 3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200.

Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pool, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

A swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover will not be required to be equipped with a pool alarm. However, this rule does not require the installation of an automatic power safety cover.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing a safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variation in initial capital costs of complying and/or annual costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the swimming pools owned or operated by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

## 4. MINIMIZING ADVERSE IMPACT.

Executive Law section 378(14)(b) makes no distinction between swimming pools located in rural areas and swimming pools located in non-rural areas. However, the economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Executive Law section 378(14)(b)-(c) requires that this rule apply to all swimming pools (other than hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) constructed or substantially modified after the effective date of section 378(14)(b), which is December 14, 2006. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b)-(c) and would endanger public safety.

## 5. RURAL AREA PARTICIPATION.

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 posted on the Department's website and 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 emergency adoption of this rule in a future edition of *Building New York*. In addition, the

Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

## Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

The rule adds a new Part 1228 to Title 19 NYCRR. Part 1228 adds provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") which require that residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with a pool alarm that is capable of detecting a child entering the water and giving an audible alarm. The pool alarms must be installed, used and maintained in conformance with the manufacturer's instructions. These provisions are added to satisfy the requirements of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law.

Pool alarms that satisfy the requirements of this rule are currently available. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. The cost of providing the appropriate surface wave sensor or subsurface disturbance sensor pool alarm(s) is considered to be modest, particularly when considered in relation to the cost of the typical swimming pool. It is anticipated that requiring pool alarms will have no significant adverse impact on jobs or employment opportunities in businesses that manufacture, install or construct the types of swimming pools that can be protected by such surface wave sensor or subsurface disturbance sensor pool alarm(s). It is also anticipated that requiring pool alarms may have a positive impact on employment opportunities in businesses that sell, install and service pool alarms.

In the case of a large, complex shaped swimming pool, a more sophisticated system may be required. A member of a hospitality and tourism association has reported that it cost \$4,000 to install a pool alarm in a 20' x 40' rectangular pool. At least one manufacturer produces a pool alarm system, using sonar technology, which is claimed to be suitable for pools of virtually any size or shape. The cost of such a system is estimated to be between \$5,000 and \$8,000. A sonar-based pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. In these cases, the cost of providing the appropriate pool alarm system may add between 5% and 10% to the cost of the pool to be protected. This may have some negative impact on the segment of the swimming pool industry that constructs large, complex shaped swimming pools that require the more expensive sonar pool alarm systems. However, based on information provided on the International Aquatic Foundation website ([http://www.iafh2o.org/IAF\\_Statistics.asp](http://www.iafh2o.org/IAF_Statistics.asp)), of the estimated 8,349,000 swimming pools in the United States, only 270,000, or less than 3.25%, are "commercial" swimming pools. Based on this information, it is estimated that less than 3.25% of swimming pools that will be installed, constructed or substantially modified after December 14, 2006 will be "commercial" swimming pools. It is also anticipated that many such "commercial" swimming pools will be of a size and shape that can be protected by the less expensive surface wave sensor or subsurface disturbance sensor pool alarms mentioned above and, accordingly, it is estimated that the percentage of new swimming pools that will require the more expensive sonar pool alarm systems will be much less than 3.25%. Therefore, it is anticipated that this rule will not have a substantial adverse impact on jobs and employment opportunities.

Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are exempted from the pool alarm requirement by this rule.

## Assessment of Public Comment

The period for submission of comments regarding this proposed rule making expired on March 18, 2008. The Department of State received three written submissions, which contained a total of seven comments. A public hearing was held on February 26, 2008. The representative of one party that made a written submission appeared at the public hearing, and summarized that written submission. No other comments were received at the public hearing.

Comment 1: "Confusion arises regarding situations for many of the pools around the state when an owner of a pool attempts to comply with the regulation as currently written. For example, in many hotels the pool is in its own room with a locked door. The door may be unlocked only by the key cards issued to guests of the hotel. These pools are often closed to

guests for certain hours. Therefore, is a pool alarm required when other circumstances are such that the pool access is restricted in this way?"

Response to Comment 1: No change was made in response to this comment. Executive Law section 378(14)(b) provides that the Uniform Code must include provisions requiring pool alarms in all residential and commercial swimming pools installed or substantially modified after December 14, 2006. The statute does not provide for exceptions for pools with restricted access. Indeed, the Legislative history indicates that the pool alarms are intended to provide a level of protection in addition to that provided by pool barriers. See, for example, the memorandum accompanying the bill which added paragraph (b) to subdivision (14) of Executive Law section 378, which included the following justification: "According to the National Center for Injury and Control (NCIPC), drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nation wide, and the third leading cause of injury-related deaths of children in New York. NCIPC data also shows [sic] that twenty-six infants and children under fourteen drowned in New York State, in 2002 alone. Local laws often require barriers for residential pools, but technological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings."

Comment 2: "The pool alarms go off when someone enters a pool. Normal use of a pool involves people entering the pool. Therefore, when people are using the pool, is the alarm meant to be turned off?"

Response to Comment 2: No change was made in response to this comment. The rule provides that pools alarms are to be "installed, used and maintained in accordance with the manufacturer's instructions." Manufacturer's instructions will typically indicate that the alarm is to be turned off, or switched to a "standby" mode, or otherwise set not to sound an alarm, when the pool is actually in use.

Comment 3: "The regulations cite outside standards for the alarms. However, the average pool owner, even the sophisticated pool owner, is not necessarily fully attentive to the nuances of the standards of the organization that the State has relied upon. Code enforcement officers are versed in construction guidelines and fire codes, yet pools are a new jurisdiction for them. Pool installers are in a position to have expertise, yet may also benefit from lack of expertise in their customers. We are left with uncertainty as to the appropriate expert to rely upon in these matters."

Response to Comment 3: No change was made in response to this comment. The rule requires use of a pool alarm which is classified by Underwriters Laboratory, Inc. (or other approved independent testing laboratory) to reference standard ASTM F2208, entitled "Standard Specification for Pool Alarms" (either the 2002 edition or the 2007 edition). A pool owner, pool installer, or code enforcement officer is not required to know the details of the ASTM F2208 reference standard, or to test the pool alarm for compliance with ASTM F2208. A pool owner, pool installer or code enforcement officer may rely upon the certification of Underwriters Laboratory, Inc., or of any other approved independent testing laboratory, that the alarm complies with ASTM F2208.

Comment 4: "(P)ool owners are accustomed to working with the Department of Health on the regulation of their pools. It is the Department of Health that has promulgated numerous regulations affecting swimming pools such as safety requirements and chemical regimens. Therefore, the Department of Health has developed an expertise in this area over the years. As such, it is confusing to . . . have a new agency regulating one aspect of pool safety."

Response to Comment 4: No change was made in response to this comment. Executive Law section 387(14) provides that the Uniform Code must include a number of provisions relating to swimming pools, including, but not limited to, the provisions requiring the use of pool alarms. The Uniform Code is promulgated by the State Fire Prevention and Building Code Council, and not by the Department of Health. The Department of State has taken steps to inform the public about the pool-related provisions in the Uniform Code. See, for example, the publication entitled "New York State Department of State Swimming Pool Rules and Regulations found in the Uniform Fire Prevention and Building Code" which is posted on the Department of State's website at <http://www.dos.state.ny.us/code/pools.htm>.

Comment 5: Comment was received indicating that the expected costs of installing a pool alarm, as published in the Regulatory Impact Statement and other documents filed with the emergency rule makings, "have proven inaccurate for our membership." The comment referred to the materials in the New York State Register which quote the cost of pool alarms to be an estimated \$150 to \$200 for "regularly shaped pools up to 16 feet by 32

feet." The comment indicates that "(o)ne of our members in particular owns a pool that is 20 feet by 40 feet, rectangular. This pool is just 25% larger than the pool cited as having a pool alarm cost of \$150 to \$200. However, the pool alarm for this pool cost 2000% more than the Department's estimation; the pool alarm cost \$4000. This is an increase of \$100 for every single square foot a pool is larger than the Department's 'regular size pool', and this is when the pool is a regular rectangle. This vast increase is not one that would be predicted from review of the published materials provided with the emergency regulation in the Register. . . . Therefore, it is of our opinion that the Department may want to consider additional research for either average pool sizes throughout the state, or of actual pool alarm costs throughout the state."

Response to Comment 5: No change to the rule was made in response to this comment. The Regulatory Impact Statement and other documents filed in connection with prior emergency rule makings and with this proposed rule making indicate that the estimated cost of pool alarms "for regularly shaped pools up to 16 feet by 32 feet" is \$150 to \$200; however, those documents also included the following information: "Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pool, a more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000." The Department of State has been advised that the pool alarm referred to in this comment uses the sonar technology, and includes a number of optional features. In addition, a review of manufacturers' and retailers' websites accessed by the Department of State on April 10, 2008 confirms that at least three manufacturers of pool alarms in the \$150 to \$200 price range state that their products work in pools up to 16' x 32', and at least one of those manufacturers states that its product works in pools up to 20' x 40'.

While no change to the rule is made in response to this comment, the Regulatory Impact Statement and other documents to be filed in connection with this rule making will be revised to reflect the information provided in this comment.

Comment 6: Comment was received expressing concern with the requirement, in section 1228.2(c)(2), that the pool alarm be audible poolside and at another location on the premises where the swimming pool is located, indicating that ". . . on commercial pools larger than 800 square feet, we are aware of only one alarm that meets the regulatory standard for remote audible sound capability, appearing to make this section of the regulation proprietary."

Response to Comment 6: No change was made in response to this comment. Based on a follow up telephone call to the party submitting this comment, it appears that only one manufacturer produces an alarm suitable for use on pools 800 square feet and larger. This was confirmed in a telephone conversation with that manufacturer. Therefore, it does not appear that there are multiple manufactures that make alarms suitable for use in the larger pools, and that only one of those manufacturers produces an alarm that is audible at a remote location; rather, it appears that the alarm produced by the one and only manufacturer that produces an alarm suitable for use in larger pools is audible poolside and at a remote location. Further, the performance standards set forth in the reference standard cited in the rule (ASTM F2208, "Standard Specification for Pool Alarms") provide that a pool alarm must sound both at poolside and inside any adjacent residence or building of occupancy via a remote receiver. It is likely that any manufacturer that begins to produce alarms suitable for use in larger pools in the future will include a remote sounding capability, and it is unlikely that adding such capability to any new alarm model will add significantly to the price of such a model (which, as noted above, is likely to be on the order of several thousand dollars).

Comment 7: Comment was received indicating that in the case of a commercial swimming pool, the only time a pool alarm can be used is "when the pool is NOT in operation, and usually closed." The comment also indicated that typically, when a commercial swimming pool is closed, especially during non-business hours, there may not be anyone on the premises to hear the alarm. The party submitting this comment suggests that the requirement that the alarm be audible at another location on the premises where the swimming pool is located be limited to residential pools only.

Response to Comment 7: No change was made in response to this comment. While it is true that an intruder may enter a pool at a time when the property where a pool is located is otherwise vacant, it is also true that an intruder could enter a pool at a time when no one else is located at or near the pool, but someone is present elsewhere on the property. Requiring

the alarm to be audible poolside and at another location increases the chance that someone will hear the alarm, and is consistent with the provisions of ASTM F2208 ("Standard Specification for Pool Alarms").

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## State University of New York

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

#### Traffic and Parking Regulations of SUNY College at Buffalo

**I.D. No.** SUN-27-08-00009-P

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

**Proposed action:** Amendment of Part 562 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360

**Subject:** Traffic and parking regulations of SUNY College at Buffalo.

**Purpose:** To make certain technical changes and amend existing regulations to parking permits, towing and fines.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.suny.edu/sunypp/documents>):** The operation of a motor vehicle on the property of the State University College at Buffalo is covered under section 360 of the Education Law which authorizes the State University to adopt and make applicable to its campuses any and all provisions of the Vehicle and Traffic Law. The regulations have been developed and are enforced to provide for the safety and convenience of students, faculty, employees and visitors upon the State University College at Buffalo campus. The proposed rule makes certain technical changes and amends existing regulations in regard to parking permits, towing and fines.

**Text of proposed rule and any required statements and analyses may be obtained from:** Angela Winn, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: [angela.winn@suny.edu](mailto:angela.winn@suny.edu)

**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: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: To provide for safety and convenience of students, faculty, employees and visitors within and upon the property, roads, streets and highways under the supervision and control of the State University through the regulation of vehicular and pedestrian traffic and parking.

3. Needs and benefits: Amendments will allow State University to better regulate and enforce rules for vehicular traffic and parking.

4. Costs: None

5. Local government mandates: None.

6. Paperwork: None

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY/Buffalo will notify those affected as soon as the rule is effective. Compliance should be immediate.

#### Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse

economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Buffalo.

#### Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Buffalo.

#### Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Buffalo.

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## Office of Temporary and Disability Assistance

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### NOTICE OF ADOPTION

#### Recertification of Public Assistance Recipients

**I.D. No.** TDA-02-08-00002-A

**Filing No.** 586

**Filing date:** June 16, 2008

**Effective date:** July 2, 2008

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

**Action taken:** Amendment of sections 351.21(b), (c) and (f)(5) and 351.22(a), (b), (c)(1) and (f) and addition of section 351.22(b)(3) to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 134-a(3) and 355(3)

**Subject:** Recertification of public assistance recipients.

**Purpose:** To provide social services districts the opportunity to request waivers from the Office of Temporary and Disability Assistance of certain face-to-face recertification interviews for public assistance recipients.

**Text or summary was published** in the notice of proposed rule making, I.D. No. TDA-02-08-00002-P, Issue of January 9, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: [Jeanine.Behuniak@otda.state.ny.us](mailto:Jeanine.Behuniak@otda.state.ny.us)

#### Assessment of Public Comment

During the public comment period for the proposed rule which will allow social services districts to request waivers of certain face-to-face recertification requirements for public assistance recipients, the Office of Temporary and Disability Assistance (OTDA) received one comment from a social services district (district). The district supported the proposed rule and stated that their existing waiver has allowed them to improve administrative efficiency and to better serve their customers.

This comment is consistent with OTDA's understanding that districts which already have waivers have found them to be beneficial.

## Urban Development Corporation

### EMERGENCY RULE MAKING

#### Economic Development and Job Creation via the Demolition, Deconstruction, Reconstruction and Rehabilitation of Buildings

**I.D. No.** UDC-27-08-00001-E

**Filing No.** 587

**Filing date:** June 16, 2008

**Effective date:** June 16, 2008

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

**Action taken:** Addition of Part 4245 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, section 5(4); L.1968, ch. 174; L. 1994, ch. 169; L. 2001, ch. 471

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

**Specific reasons underlying the finding of necessity:** Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of the Rule. This assistance is necessary to address the dangers to public health, safety and welfare posed by vacant, abandoned, surplus or condemned buildings in municipalities.

**Subject:** Economic development and job creation via the demolition, deconstruction, reconstruction and rehabilitation of buildings.

**Purpose:** To provide the framework for administration of the Restore New York's Communities Initiative.

**Substance of emergency rule:** The Restore New York's Communities Initiative (the "Program") was created pursuant to Chapter 109 of the Laws of 2006 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-n of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

#### 1. Program Assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

**This notice is intended** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire September 13, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, Urban Development Corporation d/b/a Empire State Development Corporation, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792, e-mail: apidedjian@empire.state.ny.us

#### Regulatory Impact Statement

##### 1. Statutory Authority:

Chapter 109, Laws of 2006 (Unconsolidated Laws, section 6266-n. Another Unconsolidated Laws section 6266-n was added by another act) authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities. Section 5(4) of the New York State Urban Development Corporation (UDC) Act (Unconsolidated Laws, section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with section 102 of the Executive Law.

##### 2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State. This rulemaking implements that objective.

##### 3. Need and Benefits:

The Program's legislation assists job creation throughout the State by providing the following types of assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets forth the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in section 16-n of the UDC Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

1. Evaluation Criteria - The Corporation, will review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure - Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

##### 4. Costs:

The funding source is appropriation funds (2006-07 Supplemental Bill (S8470/A12044) page 227, lines 8-14). \$150,000,000 is available for 2008. Discussions regarding funds were conducted by Ray Richardson on behalf of the Corporation and Andrew Kennedy on behalf of the Division of Budget.

##### 5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

##### 6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

##### 7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

##### 8. Federal Standards:

There are no applicable federal government standards which apply.

##### 9. Alternatives:

The Corporation considered the alternative of not promulgating this rule. However, this rulemaking was necessary in order to complete aspects of the Program that were not addressed by the enacting legislation.

10. Compliance Schedule:

No significant time will be needed for compliance.

**Regulatory Flexibility Analysis**

1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

The proposed new Rule sets forth the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The Program promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. Therefore, the effect of the Rule on small business and local government will be beneficial.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the proposed Rule.

5. Economic Feasibility:

The Rule makes the Program assistance feasible for local governments, by expressly stating that municipalities are eligible for certain types of Program assistance while permitting local governments access to all other types of Program assistance for which they may be eligible. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

Program funds are available only to municipalities. Comments were received from applicants under the Program including Albany, Syracuse, Yonkers, Buffalo, Utica, Watervliet, Rochester, Binghamton, Elmira, Wappingers Falls and Amherst. The response was overwhelmingly positive. There were some requests to reduce the requirements of the application process. However, given that the Rule's application requirements are prescribed by the enabling legislation, the corporation has determined that this is not possible.

There were also requests to expand the types of property covered and the types of entities eligible for assistance. However these are legislative matters beyond the scope of the corporation's powers.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement**

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

## Workers' Compensation Board

### NOTICE OF ADOPTION

#### Medical Treatment by Physicians, Podiatrists and Psychologists and the Health Insurer Matching Program

**I.D. No.** WCB-15-08-00006-A

**Filing No.** 600

**Filing date:** June 17, 2008

**Effective date:** July 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 325, 326, 329, 330, 331, 333, 340, 341 and 343 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 13(a) and (h)(3), 117(1) and 141

**Subject:** Medical treatment by physicians, podiatrists and psychologists and the Health Insurer Matching Program.

**Purpose:** To correct obsolete references, conform to statutory changes and correct addresses, grammar and errors.

**Substance of final rule:** The proposed changes modify Parts 325, 326 and 329 of Subchapter C (Medical Treatment and Care), Parts 330, 331 and 333 of Subchapter D (Psychology Treatment and Care), and Parts 340, 341 and 343 of Subchapter E (Podiatry Practice) of Title 12 NYCRR as follows:

Section 325-1.1 modifies "he" to "he or she." This, and the similar "him or her" and "his or hers," continues throughout Subchapter C.

Section 325-1.2 changes "chairman" to "Chair". This continues throughout Subchapters C, D and E.

Section 325-1.3 adds the word "the" before "appearance" in the first sentence. Paragraph (a) removes "Workers' Compensation Board" after "Chair" and adds "provider's" before "authorization certificate number." Paragraph (b) adds "and also with" after "Chair". In Paragraph (d), (1), (3), and (4) are deleted, (2) is renamed (1), (5) is renamed (2), and (6) is renamed (3).

Section 325-1.4 corrects "texts" to "tests" in paragraph (a)(1), removes "Workers' Compensation" before Board and changes "authorizations" to "requests" in paragraph (a)(4), and makes a few grammatical corrections. Substantively, it amends the costs of medical services requiring authorization from \$500 to \$1,000.

Section 325-1.5 adds "or carrier to authorize" after "employer" for the services of a medical specialist, and changes the wording from "within the jurisdiction of the injured worker" to "the choice of the injured worker", except to the extent an injured worker is required by Workers' Compensation Law Section 13-a (7) to obtain diagnostic tests or examinations from a provider network or networks with which the employer or carrier contracts.

Section 325-1.7 changes "second physician" and "said physician" to "superseding physician", and "doctor" to "physician," and makes gender-neutral changes.

Section 325-1.10 is amended to change "chairman" to "Chair."

Subdivisions of (b),(c),(e) and (f) of Section 325-1.11 are amended to make capitalization and gender-neutral changes as above, which continued throughout Subchapters C, D and E.

Section 325-1.17 changes "act" to "Workers' Compensation Law."

Section 325-1.19 is amended to delete "Workers' Compensation" before Board and change "chairman" to "Chair."

Section 325-1.21 is amended to make capitalization and gender-neutral changes.

Subdivisions (a) and (b), paragraph (2) of subdivision (c), and subdivisions (d), (e) and (f) of section 325-1.24 are amended to make capitalization and gender-neutral changes. In addition (c)(2)(i) capitalizes Panel, (c)(2)(ii) adds "subparagraph" before "(i) above", (c)(2)(iii) capitalizes "Law" in "Workers' Compensation law Judge." Subdivision (e) modifies "have finally determined" to "have been finally determined", and (e)(3)(ii) adds "or carrier" to "self-insured employer."

Section 325-2.1 is amended to clarify that this subpart does not apply when carriers contract with a network to perform diagnostic tests, x-ray examinations, magnetic resonance imaging pursuant to Workers' Compensation Law § 13-a(7).

Section 325-2.1, Subdivision (b) of section 325-2.2, and Subdivision (a) of section 325-2.3 are amended to capitalize "Article."

Section 325-2.4 changes "form C-3.1" to "the required consent form."

Section 325-2.5 adds "consent" before "form" and removes the form number "C-3.1."

Section 325-2.6, Section 325-2.10, Section 325-3.8, Section 325-3.10, Section 325-4.1, Subdivisions (b) and (e) of section 325-4.2, the opening paragraph of Section 325-4.3, the opening paragraph of Section 325-4.5, and subdivisions (f) and (g) of section 325-4.6 continue capitalizations and gender neutral changes. Section 325-2.10 is also amended to remove the reference to the managed care pilot program.

Section 325-5.3 removes "a magnetic computer tape" and replaces it with "the required information in a technological format acceptable to the Board," and changes "tape" to "information."

Subdivision (b) of Section 325-5.5 is amended to change "magnetic tape to be submitted," "tape" and "tape submissions" to "requests for computer searches," and "a magnetic tape using the record format as defined by the workers' compensation board" to "requests for computer searches in a technological format acceptable to the Board."

Subdivision (a) of Section 325-5.6 is amended to change "magnetic tape to be submitted" and "tape" to "requests for computer searches," and "a magnetic tape using the record format as defined by the workers' compensation board" to "requests for computer searches in a technological format acceptable to the Board." In the fourth sentence, "tape" is changed to "request made."

Subdivision (c) of Section 325-5.6 changes "tape" to "request for computer searches" and "magnetic tape" to "requests for computer searches", and "an updated file, on a separate magnetic tape" to "a separate file".

Paragraph (1) of subdivision (d) of Section 325-5.6 changes "Assistant Director of Operations, Room 601, 180 Livingston Street, Brooklyn, NY 11248" to "HIMP Coordinator, State Office Building, 44 Hawley Street, Binghamton, NY 13901."

Subdivision (a) of Section 325-5.7 is amended to change (a) changes "workers' compensation board" to "Board", remove "Workers' Compensation" from before Board, change "tape" to "file", remove "accompany the tape" to "immediately follow submission of the file" and change the address for checks to be made payable from "The New York State Office of General Services" to "The New York State Workers' Compensation Board and sent to the Workers' Compensation Board, Attention: Finance Office, 20 Park Street, Albany, NY 12207."

Paragraph (1) of subdivision (b) of Section 325-6.2 and paragraph (a) of Section 325-6.3 are amended to change "magnetic tape" to "request for computer searches" and remove "for a computer search" from after Board.

Subdivision (a) of Section 325-6.10 changes "the submission of a magnetic tape" and "submission of the tape" to "request for computer matching" and removes "for computer matching purposes" from after Board.

Section 325-8.3, section 325-8.4, subdivision (c) of section 325-8.5, section 325-8.6, and section 326-1.2 make only capitalization and gender-neutral changes.

Section 326-1.1 amended to reference that an osteopath is a licensed physician with a degree of doctor of osteopathic medicine and to correctly refer to the New York State Osteopathic Medical Society, Inc., as well as capitalization and gender-neutral changes.

Subdivision (c) of section 326-1.5 makes only capitalization and gender-neutral changes.

Section 326-2.2 changes "180 Livingston Street, Brooklyn, NY 11248" to "100 Broadway - Menands, Albany, NY 12241."

Section 326-2.6 changes "his" to "appellant's."

Section 326-2.10 makes capitalization and gender neutral changes.

Section 329.1 removes the first two sentences regarding the medical fee schedule, and deletes "rendered on a date prior to October 1, 1997" after "occupational therapy."

Section 329.3 changes the reference to the April 1, 2006, update, changes "Medicode Publications" and "Medicode" to "Ingenix, Inc." and deletes the Medicode address and phone number, adding "Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-369."

Section 329.4 changes "January 1, 1995" to "April 1, 2006."

Subdivision (b) of section 329.5 changes "this Title" to "Title 10 NYCRR," "five hundred" to "one thousand", and "requirements for pre-authorization" to "prior authorization request requirements."

Section 329.6 removes the first sentence and adds "including minor surgery or emergency treatment rendered in a room other than an operating

room" after outpatient hospital services, and removes "rendered on a date prior to July 1, 1995."

Section 330.1 changes the Board address from "180 Livingston Street, Brooklyn, NY 11248" to "Health Provider Administration, 100 Broadway-Menands, Albany, NY 12241."

Subdivision (c) of section 330.4 and section 330.7 remove "of the Workers' Compensation Board" after "Chair."

Section 331.2 changes "get" to "obtain."

Subdivision (b) and (c) of section 331.3 make only capitalization and gender-neutral changes.

Section 331.4 removes "as defined in Appendix C-7 of this Title" and "in accordance with the provision of Appendix C-7," and changes "\$500" to "\$1000."

Section 331.5 changes "succeed" to "supercede" and "succeeding" to "superceding."

Section 331.6 and section 331.7 make only capitalization and gender-neutral changes.

Section 331.9 changes "but the succeeding psychologist" to "and the superceding psychologist" and removes "section 331.4 of" before "the Part."

Section 333.1 deletes the first sentence and "rendered on a date prior to October 1, 1997" after "psychological services."

Section 333.2 (a) replaces "First Edition, August 1996, amended September 1997" and with "updated April 1, 2006", removes "Workers' Compensation" before "Board", changes "Medicode" to "Ingenix, Inc." and "which is herein incorporated by reference" to "which is hereby incorporated herein by reference."

Section 333.2 (b) changes "Workers' Compensation Board in Albany, Binghamton, Brooklyn, Buffalo, Hempstead, Rochester and Syracuse" to "Board", "Medicode" to "Ingenix, Inc." and the address from "Medicode, Inc., Dept. CH 10928, Palatine, IL 60055-0928, or by telephone at 1-800-765-6023" to "Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649."

Section 340.1 changes "180 Livingston Street, Brooklyn, NY 11248" to "Health Provider Administration, 100 Broadway - Menands, Albany, NY 12241."

Section 340.7, section 341.1, and section 341.2 make only capitalizations and gender-neutral changes.

Section 341.3 changes form "C-48" to "C-4" for attending podiatrists' 48-hour preliminary reports, and form "C-27P" to "C-27" for podiatry report for reopening of a closed case.

Section 341.4, section 341.6, section 341.7, and section 341.8 make only capitalization and gender-neutral changes.

Section 341.10 changes "succeeding podiatrist" to "superceding podiatrist."

Section 341.11 makes only gender-neutral changes.

Section 341.12 corrects a spelling error and adds "of the patient's care" after supervision.

Section 343.1 deletes the first sentence and removes "rendered on a date prior to October 1, 1997" after "podiatry services."

Section 343.2 (a) replaces "First Edition, August 1996, amended September 1997" with "updated April 1, 2006", removes "Workers' Compensation", and changes "Medicode Publications" to "Ingenix, Inc." and "which is herein incorporated by reference" to "which is hereby incorporated herein by reference."

Section 343.2 (b) changes "Workers' Compensation Board in Albany, Binghamton, Brooklyn, Buffalo, Hempstead, Rochester and Syracuse" to "Board", "Medicode" to "Ingenix, Inc." and its address from "Medicode, Inc., Dept. CH 10928, Palatine, IL 60055-0928, or by telephone at 1-800-765-6023" to "Ingenix, Inc., PO Box 27116, Salt Lake City, UT 84127-0116, or by telephone at 1-800-464-3649."

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 325-1.5 and 326-1.1.

**Text of rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Special Counsel to the Chair, Workers' Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: regulations@wcb.state.ny.us

#### Revised Job Impact Statement

A Revised Job Impact Statement is not required for the non-substantial changes to 12 NYCRR Sections 325-1.5 and 326-1.1. The proposed consensus rule making did not have a substantial impact on jobs and employment opportunities since the proposed changes: 1) correct typographical, grammatical and punctuation errors; 2) update addresses, telephone numbers and form numbers; 3) correct gender based language and other minor inaccuracies; 4) conform regulatory requirements to statutory language;

and 5) made procedural changes which participating parties are already aware of and are in compliance. The non-substantial revisions make similar changes. The revision to Section 325-1.5 merely rewords a portion of sentence to make it clear that a claimant's choice of specialist is limited to the extent the claimant is required to obtain diagnostic tests from a provider network or networks with which the employer or carrier contracts. The meaning of the provision was not changed, merely the words used to express the meaning of the provision. The revisions to Section 326-1.1 merely amend the language to correctly represent that a doctor of osteopathy is a licensed physician with a degree of doctor of osteopathic medicine and to correctly identify the State association of osteopaths as the New York State Osteopathic Medical Society, Inc. The proposed text incorrectly named the organization as the New York State Osteopathic Society, Inc. Therefore, just as the proposed consensus rule making did not have a substantial impact on jobs and employment opportunities, neither do the non-substantial changes.

#### **Assessment of Public Comment**

The Workers' Compensation Board (Board) received comments from one organization in regard to the amendments to Subchapters C, D and E of Title 12 NYCRR, specifically Parts 325, 326, 329, 330, 331, 333, 340, 341 and 343. The organization provided comments about five sections, as well as noted some potential violations of the regulations. The organization did not object to the proposed rule making.

First, the organization noted that the amendment to 12 NYCRR § 325-1.4 did not include mention of or a list of procedures costing more than \$1,000 that were pre-authorized pursuant to Workers' Compensation Law (WCL) § 13-a(5). In a conversation with the organization about this comment, it was agreed that when the Board received the recommended list from the Advisory Committee on Medical Guidelines to the Department of Insurance's Workers' Compensation Reform Task Force a rule specific to the list would be proposed.

Second, the organization noted a concern regarding the amendment to 12 NYCRR § 325-1.5 regarding a claimant's right to choose a physician except if the insurance carrier or self-insured employer has contracted with a provider network or networks for the performance of diagnostic tests pursuant to WCL § 13-a(7). The organization felt the language in the proposed rule did not make clear that the claimant's right to choose a physician is limited only to the extent that the claimant is required by § 13-a(7) to use a diagnostic network or networks with which his or her employer or its insurance carrier has contracted. To ensure the regulation is entirely clear, the Board made a non-substantial revision to this section.

Third, the organization questioned why health providers were not included in the amendments to 12 NYCRR § 325-5.6, which clarifies the health insurer matching program. The organization has been advised that the statutory authority for the health insurer matching program does not include notice to health providers, so they would not be provided notice in the regulation which implements the statute. However, the Board will work with the organization so its members receive the notice in accordance with the provisions of the WCL that apply to them.

Fourth, with respect to the amendments to 12 NYCRR § 325-8.4, the organization asked the Board to examine ways to provide the information required by the amendments to the medical providers who treat injured workers. The Board has agreed to discuss this request with the organization.

Fifth, the organization noted that the reference to Doctors of Osteopathy and the State association of osteopaths were not correctly worded in the amendments to 12 NYCRR § 326-1.1. The organization proposed non-substantial revisions to correct the technical inaccuracies. The Board has incorporated the suggestions. The suggestions were non-substantial so a revised rule making is not necessary.

### **NOTICE OF ADOPTION**

#### **Workers' Compensation Claims Processing**

**I.D. No.** WCB-15-08-00008-A

**Filing No.** 601

**Filing date:** June 17, 2008

**Effective date:** July 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 300, 303 and 310 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 20(2)(j), 25(8), 110(5), 117(1) and 141

**Subject:** Workers' compensation claims processing, including the administrative adjudication of claims and related subjects.

**Purpose:** To correct obsolete references, conform to statutory changes and correct addresses, grammar and errors.

**Text or summary was published** in the notice of proposed rule making, I.D. No. WCB-15-08-00008-P, Issue of April 9, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Special Counsel to the Chair, Workers' Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 408-0469, e-mail: regulations@wcb.state.ny.us

#### **Assessment of Public Comment**

The agency received no public comment.