RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency

01 -the *State Register* issue number

96 -the year

00001 -the Department of State number, assigned upon receipt of notice

E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00002-A
Filing No. 443
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00002-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00003-A
Filing No. 449
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00003-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00004-A
Filing No. 455
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00004-P, Issue of January 2, 2008.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00005-A
Filing No. 447
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00005-P, Issue of January 2, 2008.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00006-A
Filing No. 454
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00006-P Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00007-A
Filing No. 450
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00007-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00009-A
Filing No. 444
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00009-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00010-A
Filing No. 456
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00010-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00011-A
Filing No. 445
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00011-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00012-A
Filing No. 448
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00012-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00013-A
Filing No. 451
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00013-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00014-A
Filing No. 446
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00014-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00015-A
Filing No. 453
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00015-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-08-00016-A
Filing No. 452
Filing date: May 19, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-01-08-00016-P, Issue of January 2, 2008

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

Crime Victims Board

NOTICE OF ADOPTION

Reimbursement of Claimants' Reasonable Transportation Expenses

I.D. No. CVB-13-08-00001-A
Filing No. 441
Filing date: May 16, 2008
Effective date: June 4, 2008

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

Action taken: Addition of section 525.1(n), (o) and amendment of section 525.26(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 626 and 631

Subject: Reimbursement of claimants' reasonable transportation expenses.

Purpose: To define and establish the process through which claimants may be reimbursed by the board for certain transportation expenses and allow claimants or potential claimants to be aware of what expenses the board would consider reimbursable under its statutory authority.

Text or summary was published in the notice of proposed rule making, I.D. No. CVB-13-08-00001-P, 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: John Watson, General Counsel, Crime Victims Board, One Columbia Circle, Suite 200, Albany, NY 12203, (518) 457-8066, e-mail: johnwatson@cvb.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Contracts for Excellence

I.D. No. EDU-20-07-00005-E
Filing No. 459
Filing date: May 20, 2008
Effective date: May 20, 2008

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

Action taken: Addition of section 100.13 and amendment of section 170.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 211-d(1-9); and L. 2007, ch. 57, part A, section 12; and L. 2008, ch. 58, part A, section 2

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Education Law section 211-d, as added by Chapter 57 of the Laws of 2007 and amended by Chapter 57 of the Laws of 2008, to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

Education Law section 211-d requires certain school districts identified in the statute to prepare a contract for excellence, which shall describe how the total foundation aid and supplemental educational improvement plan grants shall be used to support new programs and new activities or expand the use of programs and activities demonstrated to improve student achievement. The statute requires the Commissioner to establish by regulation the allowable programs and activities for such purposes. The statute also requires the Commissioner to prescribe a format by which each affected school district shall publicly report its expenditures of total foundation aid.

Chapter 57 of the Laws of 2008 amended Education Law section 211-d to revise the criteria for determining which school districts are required to prepare a contract for excellence, and to add model programs for students with limited English proficiency as a sixth category of allowable programs and services.

The proposed amendment was adopted at the April 23-24, 2007 Regents meeting as an emergency measure, effective April 27, 2007, in order to immediately establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for contracts for excellence under Education Law section 211-d, so that affected school districts may timely prepare such contracts for the 2007-2008 school year pursuant to statutory requirements. A Notice of Emergency Adoption and Proposed Rule Making was published in the *State Register* on May 16, 2007.

At their June 25-26, 2007 meeting, the Regents substantially revised the proposed rule, and adopted the revised rule by emergency action, effective July 26, 2007. A Notice of Emergency Adoption and Revised Rule Making was published in the August 8, 2007 *State Register*.

At their July 25, 2007 meeting, the Board of Regents further revised the proposed rule in response to public comment and adopted the revised rule as an emergency action, effective July 31, 2007. A Notice of Emergency Adoption and Revised Rule Making was published in the August 15, 2007 *State Register*.

At their September 10, 2007, October 23, 2007 and January 14-15, 2008 meetings, the Board of Regents readopted the July emergency rule to ensure that the emergency rule remains in effect until the effective date of its adoption as a permanent rule.

At their March 17-18, 2008 meeting, the Board of Regents made substantial revisions to the proposed rule, in response to the Department's experience with the implementation of the Contracts for Excellence and discussions held with educational advocates and representatives from school boards and school administrators. A Notice of Revised Rule Making, reflecting these revisions, was published in the *State Register* on March 5, 2008.

Further additional revisions to the rule are now proposed, as set forth in the Revised Regulatory Impact Statement submitted herewith, in response to public comment on the March 5, 2008 revised rule making and in response to Chapter 57 of the Laws of 2008. Pursuant to State Administrative Procedure Act section 202(4-a), the revised rule cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the *State Register*. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be adopted by regular action, after expiration of the 30-day public comment period for a revised rule making, is the July 28-29, 2008 Regents meeting. However, the March emergency adoption will expire on May 19, 2008, 60 days after its filing with the Department of State on March 21, 2008. A lapse in the rule's effectiveness would disrupt implementation of the contract for excellence program under Education Law section 211-d, and adversely affect the preparation and approval of contracts for the 2008-2009 school year.

An eighth emergency adoption is therefore necessary for the preservation of the general welfare to immediately adopt revisions to the rule in response to public comment and statutory changes enacted pursuant to Chapter 57 of the Laws of 2008, and to otherwise ensure that the emergency rule that was adopted at the April 2007 Regents meeting, revised and readopted at the June and July Regents meetings, and readopted at the September and October 2007, and January and March 2008 Regents meetings, remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the proposed rule will be presented for permanent adoption at the July 28-29, 2008 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period for revised rule makings.

Subject: Contracts for excellence.

Purpose: To implement Education Law section 211-d, as added by chapter 57 of the Laws of 2007 and amended by chapter 57 of the Laws of 2008, by establishing allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

Substance of emergency rule:

The rule is necessary to implement Education Law section 211-d to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

The proposed rule was adopted as an emergency measure at the April Regents 2007 meeting, revised and readopted as an emergency rule at the June and July Regents meetings, readopted as an emergency action at the September and October 2007 and January 2008 Regents meetings, and revised and readopted as an emergency action at the March 2008 Regents meeting.

At their May 2008 meeting, the Board of Regents revised and readopted the March 2008 emergency rule as an emergency rule, effective May 19, 2008. The following is a summary of the emergency rule.

Section 100.13(a) defines: (1) total foundation aid; (2) supplemental educational improvement plan grant; (3) contract amount; (4) base year; (5) experimental programs; (6) highly qualified teacher; (7) response to intervention program and (8) students with low academic achievement.

Section 100.13(b) provides that each contract shall be prepared pursuant to the requirements of subdivision (d), shall be in a format, and submitted pursuant to a timeline, prescribed by the Commissioner and shall:

(1) describe how the contract amount shall be used to support new programs and new activities or expand use of programs and activities demonstrated to improve student achievement, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(c); and specify how the contract amount will be distributed in accordance with 100.13(b)(3);

(2) specify the new or expanded programs, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(c), for which each sub-allocation of the contract amount shall be used and affirm that such programs shall predominately benefit students with the greatest educational needs including, but not limited to: (a) limited English proficient (LEP) students and students who are English language learners (ELL), (b) students in poverty, (c) students with disabilities, and (d) students with low academic achievement;

(3) state, for all funding sources, whether federal, state or local, the instructional expenditures per pupil, the special education expenditures per pupil, and the total expenditures per pupil, projected for the current year and estimated for the base year; provided that no later than February 1 of the current school year, the district shall submit a revised contract stating such expenditures actually incurred in the base year;

(4) include any programmatic data projected for the current year and estimated for the base year, as the Commissioner may require; and

(5) in the NYC school district, include a plan that meets the requirements of section 100.13(d)(2)(i)(a), to reduce average class sizes within five years for the following grade ranges: (a) prekindergarten through grade three; (b) grades four through eight; and (c) grades nine through twelve. Such plan shall be aligned with the capital plan of the NYC school district and include continuous class size reduction for low performing and overcrowded schools beginning in the 2007-2008 school year and thereafter and include the methods to be used to achieve proposed class sizes, such as the creation or construction of more classrooms and school buildings, the placement of more than one teacher in a classroom or methods to otherwise reduce the student to teacher ratio. Beginning in the 2008-2009 school year, such plan shall provide for reductions in class size that, by the end of the 2011-2012 school year, will not exceed the prekindergarten through grade 12 class size targets prescribed by the Commissioner after consideration of the recommendation of an expert panel appointed to review class size research.

Paragraph (3) of section 100.13(b) prescribes requirements for the use of contract for excellence funds.

The Commissioner shall approve each contract meeting the provisions of section 100.13 and certify, for each contract, that the expenditure of additional aid or grant amounts is in accordance with Education Law section 211-d(2). Approval shall be given to contracts demonstrating to the Commissioner's satisfaction that the allowable programs selected:

(i) predominately benefit students with the greatest educational needs;

(ii) predominately benefit students in schools identified as requiring academic progress, or in need of improvement, or in corrective action, or restructuring and address the most serious academic problems in those schools; and

(iii) are based on practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards.

Section 100.13(c) establishes the allowable programs and activities, including experimental programs. Section 100.13(c)(1) establishes general requirements, including that such programs and activities: (1) predominately benefit students with the greatest educational needs including, but not limited to: LEP and ELL students, students in poverty, students with disabilities, and students with low academic achievement; (2) predominately benefit students in schools identified as requiring academic progress, in need of improvement, in corrective action, or restructuring and address the most serious academic problems in those schools; (3) be consistent with federal and State statutes and regulations governing the education of such students; (4) be developed in reference to practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards; (5) where applicable, be accompanied by high quality, sustained professional development focused on content pedagogy, curriculum development, and/or instructional design in order to ensure successful implementation of each program and activity; (6) ensure that expenditures of the contract amount shall be used to supplement and not supplant funds expended by the district in the base year for such purposes; (7) ensure that all additional instruction is provided by appropriately certified teachers or highly qualified teachers where required by section 120.6 of this Title, emphasizing skills and knowledge needed to facilitate student attainment of State learning standards; and (8) be coordinated with all other allowable programs and activities included in the district's contract as part of the district's comprehensive educational plan.

Section 100.13(c)(2) establishes criteria for specific allowable programs and activities, which shall include: (1) class size reduction for (a) the NYC school district and (b) all other school districts; (2) student time on task; (3) teacher and principal quality initiatives; (4) middle school and high school restructuring; and (5) full-day kindergarten or prekindergarten programs.

Section 100.13(c)(2)(i) establishes requirements for class size reduction, including special provisions for NYC. NYC must allocate some of its total contract amount to class size reduction according to a plan, included in their contract and approved by the Commissioner pursuant to section 100.13(c), to reduce the average class size for the following grade ranges: prekindergarten to grade three, grades four through eight, and grades nine through twelve, commencing in the 2007-2008 school year and ending in the 2011-2012 school year, to target levels recommended by the expert panel appointed by the Commissioner. Districts outside of NYC shall establish class size reduction goals in the 2007-2008 school year and demonstrate measurable progress towards meeting such goals; and beginning with the 2008-2009 school year, shall demonstrate measurable progress towards meeting the target levels recommended by the expert panel. The rule also mandates NYC give priority to prekindergarten through grade 12 students in schools requiring academic progress, correction, improvement or in restructuring and to overcrowded schools. Furthermore, it requires that classrooms created shall provide adequate and appropriate physical space to students and staff, among others. Class size reduction may be accomplished through the creation of additional classrooms and buildings, through assignment of more than one teacher to a classroom or, in NYC, by other methods to reduce the student to teacher ratio, as approved by the Commissioner.

Section 100.13(c)(2)(ii) provides that allowable programs and activities related to student time on task may be accomplished by: (1) lengthened school days, (2) lengthened school years and (3) dedicated instructional time, including individual intervention, tutoring and student support services.

Section 100.13(c)(2)(iii) prescribes requirements for teacher and principal quality initiatives, including: (1) recruitment and retention of teachers, (2) mentoring for teachers and principals in their first or second year of a new assignment, (3) incentive programs for teacher placement, (4) instructional coaches, and (5) school leadership coaches. Districts shall ensure that an appropriately certified, or highly qualified teacher where required under section 120.6, is in every classroom and an appropriately certified principal is assigned to every school.

Section 100.13(c)(2)(iv) provides that allowable programs and activities for middle and high school restructuring include: (1) instructional program changes to improve student achievement and attainment of the State learning standards and (2) structural organization changes. The section further requires that districts choosing to make organization changes must also make instructional program changes.

Section 100.13(c)(2)(v) is added to provide that allowable programs and activities for model programs for student with limited English proficiency include: (1) programs serving limited English proficiency students to address their learning needs by providing education in their native language, provide targeted programs to student who have resided in the United State for 7 years or longer and who are below grade level in reading, writing and other targeted areas , and provide support services to students transitioning into mainstream educational settings; (2) native language support; (3) new immigrant programs; (4) recruitment and retention programs for bilingual teachers and personnel staff; and (5) parent involvement programs.

Section 100.13(c)(2)(vi) provides that allowable programs and activities for full-day kindergarten or prekindergarten programs include: (1) a minimum full school day program, (2) a minimum full school day program with additional hours for children and families, (3) a minimum full school day program with additional hours in collaboration with community based agencies (prekindergarten only), and (4) classroom integration programs for students with disabilities (specifically for full-day prekindergarten).

Section 100.13(c)(3) lists the following requirements for experimental programs, not included in the allowable programs and activities described above: (1) a maximum percentage of the contract amount that may be used for experimental programs, (2) a plan must be submitted to the Commissioner, (3) the program must be based on an established theoretical base supported by research or other comparable evidence, (4) the implementation plan for an experimental program must be accompanied by a program evaluation plan based on empirical evidence to assess the impact on

student achievement, and (5) the experimental program may be in partnership with an institution of higher education or other organization with extensive research experience and capacity.

Section 100.13(c)(3)(ii) states provides a maximum amount of up to $30 million dollars or twenty-five percent of the contract amount, whichever is less, that districts may use in the 2007-2008 school year to maintain existing programs and activities listed in Education Law section 211-d(3)(a).

Section 100.13(d) establishes criteria for the development of the contract for excellence pursuant to a public process, in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c, which shall include at least one public hearing. Special provisions for NYC's development of the contracts are included.

Section 100.13(e) establishes requirements to assure procedures are in place by which parents may bring complaints concerning implementation of a district's contract for excellence, including special provisions for the NYC.

Section 100.13(f) establishes requirements for the public reporting by districts of their school-based expenditures of total foundation aid.

Section 170.12 (e)(1), relating to requirements of an annual audit of school district records, is amended to provide that, for schools required to prepare a contract for excellence pursuant to Education Law section 211-d, the annual audit for the year such contract is in effect shall also include a certification by the accountant or, where applicable, the NYC comptroller, in a form prescribed by the Commissioner, that the increases in total foundation aid and supplemental educational improvement plan grants have been used to supplement, and not supplant funds allocated by the district in the base year for such purposes.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-20-07-00005-EP, Issue of May 16, 2007. The emergency rule will expire July 18, 2008.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law sections 101, 207, 215, 305(1) and (2) and 211-d, and section 12 of Part A of Chapter 57 of the Laws of 2007 and section 2 of Part A of Chapter 57 of the Laws of 2008.

LEGISLATIVE OBJECTIVES:

The rule is necessary to implement Chapter 57 of the Laws of 2007 and Chapter 58 of the Laws of 2008.

NEEDS AND BENEFITS:

The rule establishes allowable programs and activities, reporting criteria , and other requirements for contracts for excellence.

COSTS:

a. Costs to State government: None.

b. Costs to local governments:

(i) Sustained Professional Development

Estimated costs to school districts of $400,000/year, assuming two extra days per year of sustained professional development for one to two dozen teachers per district at a cost of $125 per teacher per day.

(ii) Other Costs

Estimated costs to school districts of $9,435,000/year, depending upon allowable programs and activities selected, and assuming average need of each district to hire two new teachers at $53,000 per year/per teacher (salary plus benefits).

(iii) Public Process Costs

Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions, from an estimated lower cost of $1000 or less, based upon costs to a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, to an estimated upper cost of over $100,000, based upon costs to the New York City School district.

We anticipate minimal costs for preparation of the public comment record and assessment to be absorbed using existing staff and resources.

(iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint process can be included within other translating functions performed by the City's Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These two documents could also be posted to the district's website, or be sent out via other mailings, thereby incurring a small marginal cost.

Investigation, determination and appeal will vary by the size and scope of the contract and its allowable program activities. Assuming if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, $500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were $400 million in 2008-09 (this figure was $428 million in 2007-08), the cost statewide would be $400,000.

c. Costs to private, regulated parties: None.

d. Costs to the Department of implementation and continuing compliance:

There may be additional costs for convening an expert panel by the Commissioner to determine class size ranges, the cost of which will vary depending on the "formality" of the process.

LOCAL GOVERNMENT MANDATES:

Each district identified in the statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on the allowable programs and activities chosen, the rule mandates or requires certain actions.

Each school district shall post its contract for excellence, and any amended contract, on its website within 48 hours of submission to the commissioner for approval.

School districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings on their proposed contracts, and provide reasonable notice to parents and persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c. The rule requires school districts to provide reasonable notice to the public of each public hearing held as part of the public process to develop contracts for excellence; to require school districts provide public notice of the hearings to the news media and conspicuously post public notice, consistent with the notice and time provisions of the Open Meetings Law; and to provide for the participation in public hearings of any interested party.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 12 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for use.

Districts shall provide reasonable notice to parents of students or persons in parental relation to students of the procedures for bringing a complaint concerning implementation of the contract for excellence, and provide translations of the complaint form and procedures into the languages other than English most commonly spoken in the district.

Each district shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website, and make them available in schools and school district offices. Districts may use additional methods to provide notice, including providing copies in district mailings and distributions.

PAPERWORK:

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

Notice of the written public comment period and public hearing shall include:

(1) a general description of the contract;

(2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;

(3) information where to obtain a copy of the proposed contract; and

(4) a description of the public comment process and public hearing process.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

The rule requires school districts to provide reasonable notice to the public of each public hearing held as part of the public process to develop contracts for excellence; to require school districts provide public notice of the hearings to the news media and conspicuously post public notice, consistent with the notice and time provisions of the Open Meetings Law; and to provide for the participation in public hearings of any interested party.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment containing a summary of the substance of the comments received, grouped by subject matter, and the district's response to each substantive comment, including a statement of any changes made to the contract as a result of such comment, or an explanation why the comment's suggestions were not incorporated into the contract. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for its use, including the locations and deadline for filing, and provide reasonable notice to parents or persons in parental relation, of the procedures for bringing a complaint concerning implementation of the district's contract.

Districts shall provide translations of the form and notice into languages other than English most commonly spoken in the district, and shall post, and make available in schools and school district offices, its notice of complaint procedures and complaint form on a district website, and may use additional methods to provide notice.

The building principal, community superintendent or superintendent, as applicable shall notify the complainant in writing of his or her complaint determination, including the basis for such determination within 30 days from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify the complainant in writing of the appeal determination, including the basis for such determination, and an explanation of the appeal procedures.

Upon appeal of the complaint determination, or an appeal determination of a superintendent or community superintendent, to the trustees/board of education or chancellor, written notice shall be provided the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law section 310.

DUPLICATION:

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

ALTERNATIVES:

An alternative proposal which was considered was to create a fiscal and program accountability system similar to the comprehensive education plan (CEP) process for districts, not meeting their Adequate Yearly Progress (AYP) targets pursuant to the federal No Child left Behind Act. However, a CEP-like process, which would have required large and comprehensive data collection and paperwork requirements, was rejected as too cumbersome, time-intensive and not flexible enough, relative to the simpler, automated, web-based application and monitoring approach enacted by this proposed rule.

FEDERAL STANDARDS:

The proposed rule does not exceed any minimum federal standards. There are no substantive federal standards that are applicable to this proposal insofar as there is no federal equivalent of the contract for excellence.

COMPLIANCE SCHEDULE:

Contracts for 2007-2008 were approved in November 2007 and will apply to expenditures through June 30, 2008. Districts will need to prepare and submit reports to the Department during Fall 2008 summarizing program activities, expenditures and results under their programs, and will need to have an independent audit performed and submitted to the Department.

Planning for the second year of the program (2008-2009) is ongoing and occurring concurrently. Changes in program regulations and requirements may occur as a result of the budgetary and legislative process. It is anticipated that a similar compliance scheduler under Chapter 57 of the Laws of 2008 will pertain, with districts required to submit or update their contracts by July 1, 2008 and the Department approving such contracts or updates by August 1, 2008.

Regulatory Flexibility Analysis

Small Businesses:

The rule is necessary to implement Education Law § 211-d, relating to contracts for excellence by certain specified school districts, and does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required.

Local Governments:

EFFECT OF RULE:

The rule applies to 56 school districts in the State determined to meet the statutory requirements in Education Law § 211-d necessitating submission of a contract.

COMPLIANCE REQUIREMENTS:

Each district identified in statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on allowable programs and activities chosen, the rule mandates or requires certain actions.

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

Each district must post its contract for excellence, and any amended contract, on its website within 48 hours of submission to the commissioner.

Districts must establish a 30-day public comment period, and procedures for public hearings on proposed contracts, and provide reasonable notice to parents/persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law § 211-c.

Notice of the public comment period and public hearing shall include:

(1) a general description of the contract;

(2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;

(3) information where to obtain a copy of the proposed contract; and

(4) a description of the public comment and public hearing process.

The rule requires school districts to provide reasonable notice to the public of each public hearing; to provide public notice of hearings to the news media and conspicuously post public notice, consistent with the notice and time provisions of the Open Meetings Law; and provide for participation by any interested party.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 12 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment containing a summary of the substance of the comments received, grouped by subject matter, and the district's response to each substantive comment, including a statement of any changes made to the contract as a result of such comment, or an explanation why the comment's suggestions were not incorporated into the contract. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form for complaints concerning contract implementation, and instructions for use, including locations and filing deadline. Districts shall provide translations of the form and notice into languages other than English most commonly spoken in the district, and post its notice of complaint procedures and complaint form on a district website, make them available in schools and school district offices, and may use additional methods to provide notice.

The building principal, community superintendent or superintendent, as applicable, shall notify complainant in writing of the complaint determination, including the basis for such determination, within 30 days from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify complainant in writing of the appeal determination, including the basis for such determination, and an explanation of appeal procedures.

Upon appeal to the trustees/board of education or chancellor, written notice shall be provided of the appeal determination, the basis for the

determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law § 310.

PROFESSIONAL SERVICES:

Depending on allowable programs and activities chosen, districts may be required to procure experts in: teacher professional development, curriculum and/or instructional design, school improvement and other related tasks and professional functions.

COMPLIANCE COSTS:

The rule is necessary to implement Education Law § 211-d and does not impose any significant, additional costs beyond those inherent in the statute.

The new requirements will result in additional costs, as follows:

(i) Sustained Professional Development

Assuming the need for two extra days per year of sustained professional development for contract of excellence programs, for one to two dozen teachers per district at a cost of $125 per teacher per day, it is estimated there might be a total annual cost for all of the districts of $400,000 per year (for purposes of this calculation, NYC was treated as thirty-four districts—one high school district, one special education district and thirty-two community school districts).

(ii) Other Costs

Depending on a district's selection of allowable programs and activities, there may be additional costs. Particular activities where the cost could be large include: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-based intervention; and analyzing, gathering and compiling the necessary research to support their proposed contract for excellence programs and activities. If it is estimated that each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new, appropriately certified teachers at an annual cost of $53,000 per teacher (salary plus benefits). This yields a total estimated, annual cost of $9,435,000 for all contract districts.

(iii) Public Process Costs

Costs are associated with providing notice of the public comment period and public hearings, including translations where applicable, and preparation of the public comment record and assessment. Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural is around $7. A half page, posted twice during the comment period, results in about $1,000 costs: ($7 per inch X 70 inches X 2 days = $980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of $115,000: African-American Observer ($59 per inch X 70 inches X 2 = $8,260); El Diario/La Prensa ($60 X 70 X 2 = $8,400); and the New York Post ($711 X 70 X 2 = $99,540).

We anticipate minimal costs for preparation of the public comment record and assessment, to be absorbed using existing staff and resources.

(iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000-word legal document into Latin-American Spanish could be procured for $165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost $650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint processes can be included within other translating functions performed by the City's Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These documents could be posted to the district's website, or sent out via other mailings, thereby incurring a small marginal cost.

The rule requires districts make reasonable efforts to investigate complaints by parents and notify complainants of their determination within 30 days of its receipt, and provides for appeal procedures. Costs are hard to estimate and should vary by size and scope of the contract and allowable program activities. We anticipate the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its prominence as a school improvement initiative. We might expect more complaints initially and fewer over time as the public process for developing contracts results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, $500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were $400 million in 2008-09 (this figure was $428 million in 2007-08), the cost statewide would be $400,000.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes very few compliance and no paperwork requirements not already imposed by the authorizing statute. Those reporting requirements imposed by the statute are made feasible in that they are generally automated and web-based, using data entry screens and edit checks. Nothing would prohibit districts from using funds to procure professional services, such as certified professional accountants, software developers or experts in curriculum and instruction, or education research, all of whom may be necessary to meet the rule's requirements.

MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law § 211-d and is applicable to all identified school districts throughout the State. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt districts from the rule's coverage. A substantial effort was made to involve districts in the development of this rule, and to the extent possible, the rule has been drafted incorporating their comments, to provide flexibility in implementing many of the provisions.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department sent guidance memos to school districts and their component schools on April 4, April 9, June 21 and June 25, 2007, seeking the input, impact, questions and feedback of the rule on districts, as well as communicating in broad terms, how the contract would be implemented. Moreover, on April 12, 2007 districts were invited to meet with key Department stakeholders, including teleconferencing abilities for those district personnel unable to travel to Albany. Department staff were available to respond to questions from 9 AM to 7:30 PM, from April 9-12. Copies of the rule were also provided to District Superintendents with the request they distribute it to school districts for review and comment.

Following approval of the contracts by the Commissioner in November 2007, a meeting was held in Troy, New York on December 19, 2007 to engage in collaborative discussions with representatives of each Contract for Excellence school districts. 82 superintendents and school district representatives attended the full-day session, along with many others participating via a web cast. Constructive feedback was sought and received on what worked well in the first year and areas for improvement. Changes to the proposed 2008-2009 legislation, regulations and the on-line contract system have been made and will continue to develop as a direct result of these meetings and discussions.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule applies to school districts in the State identified pursuant to Education Law § 211-d as having to file a contract for excellence, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Eight (8) of the school districts that will have to file contracts for excellence for the 2007-2008 school year are rural school districts.

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

Each district identified in statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on allowable programs and activities chosen, the rule mandates or requires certain actions.

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

Each district must post its contract for excellence, and any amended contract, on its website within 48 hours of submission to the commissioner.

Districts must establish a 30-day public comment period, and procedures for public hearings on proposed contracts, and provide reasonable notice to parents/persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law § 211-c.

Notice of the public comment period and public hearing shall include:

(1) a general description of the contract;

(2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;

(3) information where to obtain a copy of the proposed contract; and

(4) a description of the public comment and public hearing process.

The rule requires school districts to provide reasonable notice to the public of each public hearing; to provide public notice of hearings to the news media and conspicuously post public notice, consistent with the notice and time provisions of the Open Meetings Law; and provide for participation by any interested party.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 12 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment containing a summary of the substance of the comments received, grouped by subject matter, and the district's response to each substantive comment, including a statement of any changes made to the contract as a result of such comment, or an explanation why the comment's suggestions were not incorporated into the contract. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form for complaints concerning contract implementation, and instructions for use, including locations and filing deadline. Districts shall provide translations of the form and notice into languages other than English most commonly spoken in the district, and post its notice of complaint procedures and complaint form on a district website, make them available in schools and school district offices, and may use additional methods to provide notice.

The building principal, community superintendent or superintendent, as applicable, shall notify complainant in writing of the complaint determination, including the basis for such determination, within 30 days from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify complainant in writing of the appeal determination, including the basis for such determination, and an explanation of appeal procedures.

Upon appeal to the trustees/board of education or chancellor, written notice shall be provided of the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law § 310.

Depending on which allowable programs and activities are chosen, districts may be required to hire or procure experts in: teacher professional development, curriculum and/or instructional design, school improvement and other related tasks and professional functions.

COSTS:

The rule is necessary to implement Education Law § 211-d and does not impose any significant, additional costs beyond those inherent in the statute.

The new requirements will result in additional costs, as follows:

(i) Sustained Professional Development

Assuming the need for two extra days per year of sustained professional development for contract of excellence programs, for one to two dozen teachers per district at a cost of $125 per teacher per day, it is estimated there might be a total annual cost for all of the districts of $400,000 per year (for purposes of this calculation, NYC was treated as thirty-four districts – one high school district, one special education district and thirty-two community school districts).

(ii) Other Costs

Depending on a district's selection of allowable programs and activities, there may be additional costs. Particular activities where the cost could be large include: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-based intervention; and analyzing, gathering and compiling the necessary research to support their proposed contract for excellence programs and activities. If it is estimated that each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new, appropriately certified teachers at an annual cost of $53,000 per teacher (salary plus benefits). This yields a total estimated, annual cost of $9,435,000 for all contract districts.

(iii) Public Process Costs

Costs are associated with providing notice of the public comment period and public hearings, including translations where applicable, and preparation of the public comment record and assessment. Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural is around $7. A half page, posted twice during the comment period, results in about $1,000 costs: ($7 per inch X 70 inches X 2 days = $980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of $115,000: African-American Observer ($59 per inch X 70 inches X 2 = $8,260); El Diario/La Prensa ($60 X 70 X 2 = $8,400); and the New York Post ($711 X 70 X 2 = $99,540).

We anticipate minimal costs for preparation of the public comment record and assessment, to be absorbed using existing staff and resources.

(iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000-word legal document into Latin-American Spanish could be procured for $165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost $650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint processes can be included within other translating functions performed by the City's Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These documents could be posted to the district's website, or sent out via other mailings, thereby incurring a small marginal cost.

The rule requires districts make reasonable efforts to investigate complaints by parents and notify complainants of their determination within 30 days of its receipt, and provides for appeal procedures. Costs are hard to estimate and should vary by size and scope of the contract and allowable program activities. We anticipate the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its prominence as a school improvement initiative. We might expect more complaints initially and fewer over time as the public process for developing contracts results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, $500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were $400 million in 2008-09 (this figure was $428 million in 2007-08), the cost statewide would be $400,000.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 57 of the Laws of 2007 and is applicable to all identified school districts throughout the State. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the rule. Nevertheless, a substantial effort was made to involve school districts, including rural districts, in the development of this rule, and to the extent possible, the proposed rule has been

drafted incorporating their comments, to provide flexibility in implementing many of the provisions.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department's Rural Education Advisory Committee that includes representatives of school districts in rural areas as well as the Rural Schools Association. Guidance memos to school districts and their component schools were sent out from the Senior Deputy Commissioner for P-16 education of the State Education Department on April 4, April 9, June 21 and June 25, 2007. In these documents, the Education Department sought the input, impact, questions and feedback of the proposed rule on districts as well as communicating in broad terms, how the contract would be implemented. Moreover, on April 12, 2007 districts were invited to meet with key Department stakeholders, including teleconferencing abilities for those district personnel unable to travel to Albany. In these memoranda, the Department communicated that staff in the Department's Office of School Operations and Management Services were available to respond to questions from 9 AM to 7:30 PM, from April 9-12. Copies of the proposed rule were also provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment.

Following approval of the contracts by the Commissioner in November 2007, a meeting was held in Troy, New York on December 19, 2007 to engage in collaborative discussions with representatives of each Contract for Excellence school districts. 82 superintendents and school district representatives attended the full-day session, along with many others participating via a web cast. Constructive feedback was sought and received on what worked well in the first year and areas for improvement. Changes to the proposed 2008-2009 legislation, regulations and the on-line contract system have been made and will continue to develop as a direct result of these meetings and discussions.

Job Impact Statement

The proposed amendment is necessary to implement Education Law section 211-d, as added by Chapter 57 of the Laws of 2007 and amended by Chapter 57 of the Laws of 2008, to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the *State Register* on March 5, 2008, the State Education Department (SED) received substantial public comment. A summary of the public comment follows:

I. Public Participation/Public Process

1. In response to comment to allow all interested parties to participate in the public process for development of Contracts for Excellence and require public hearings be held pursuant to Open Meetings Law requirements, section 100.13(e)(2)(ii)(b) was revised to require school districts to provide reasonable notice to the public of each public hearing held as part of the public process to develop contracts for excellence; to require districts to provide public notice of the hearings to the news media and conspicuously post public notice, consistent with the notice and time provisions of the Open Meetings Law; and to provide for the participation in public hearings of any interested party including, but not limited to, parents and persons in parental relation to students, teachers, administrators and distinguished educators. However, the provisions in 100.13(e)(2)(i) relate to the consultation process for development of contracts for excellence, and statute restricts participation in such instance to parents and persons in parental relation to students, teachers, administrators and distinguished educators. Therefore, no changes have been made to such provisions.

2. In response to comment to require that contracts submitted to the commissioner for approval be made publicly available, section 100.13(d)(2)(iv)(a) has been added to require each school district to post its contract on the district's website, within 48 hours of submission to the Commissioner.

3. In response to a comment that the Commissioner should review district's public process to ensure compliance with 100.13(d) before approving their contract, section 100.13(b)(2) has been revised to clarify that the Commissioner's approval will be based upon the contract meeting the provisions of the entire section 100.13, which would include the public process provisions. In addition, this will be incorporated into the superintendent's certification statement on the on-line Contracts for Excellence system.

4. In response to comment to require any amendment resulting in a reallocation of resources of greater than 5% be subject to public comment requiring a 15 day notice and a 15 day comment period, section 100.13(b)(4)(iii) has been added to require the amended contract be posted on a district website within 48 hours of submission. In addition, SED notes the amended contract would be subject to the complaint process.

Additional comments were determined to require revisions to statute before regulations could be adopted. These include: (1) allow NYC county level public hearings to incorporate the community district education council public meeting; (2) require all complaints be initiated with filing with community superintendent; and (3) extend NYC public comment process to school districts in rest of State.

Other comments were deemed to not require changes to the regulations, because SED deemed the existing regulation provisions to be sufficient to address the comments concerns, or disagreed with comments. These include: (1) require transcripts of public hearing comments be posted on district's website, (2) require consultation with professional educators, community-based organizations, education experts, bilingual and special education coordinators; (3) public hearings and meeting be accessible to those with limited English proficiency; (4) require districts to record persons making comments and include in public comment assessment; (5) provide in NYC, a public hearing shall be held within each county of the city, a transcript be included when contract is submitted to commissioner, and that each community district contract be submitted by community superintendent to community school district education council for review at a public meeting; (6) regulation doesn't provide for public process to develop contracts; (7) delete requirement that school district must respond to all substantive comments; and (8) school districts should provide public comment assessment and public hearing transcript when they submit contracts to commissioner.

II. Complaint procedures

1. In response to comment to require school districts to make complaint forms available in other forms than just on the school district website, section 100.13(e)(2)(ii)(c) has been revised to require districts to make copies of the complaint notice and complaint form available in schools and district offices.

One comment requests provision be added that no reprisal of any kind may be taken by a school district or any employee of a school district against any person bringing a complaint under this procedure. While SED agrees that no reprisals may be taken, remedies exist elsewhere in the law and it is not necessary to include this provision in the regulations.

Some comments require a revision to statutes, including: (1) allowing individual students and staff and representative organizations to bring complaints concerning district's implementation of the contract; (2) provide for expedited appeal procedure directly to Commissioner; (3) clarify that use or availability of the procedures provided in regulation shall not be construed as limiting exercise of any of the rights or remedies available to any person under state or federal law.

Other comments were deemed to not require changes to the regulations, because SED deemed the existing regulation sufficient to address the comments' concerns, or disagreed with the comments. These include: (1) complaint form and complaint process too complicated and burdensome for parents; (2) require consultation with parent and community organizations when developing complaint form; (3) allow complaints to be brought at any time during school year of contract; (4) require school district to provide written response if it fails to investigate and respond to complaint; (5) require school district to publicly report complaint resolutions; (6) specify criteria for when notice is deemed reasonable; and (7) require notice of public comment include information about contract planning and approval process;.

III. Class Size Reduction

1. In response to comment that public needs better information on the number of additional teachers hired and additional classes formed to lower class size, and to what levels class sizes have been reduced as a result, SED agrees and will study this with the Commissioner's class size panel.

2. In response to comment that data on number of classes, average class size and number of classroom teachers be provided for baseline year and each year thereafter, section 100.13(c)(2)(i)(a)(1)(ii) has been revised to provide for such data for the 2007-2008 school year and continuing for each school year thereafter up to and including the 2011-2012 school year.

3. In response to comment that NYC should report staffing of classroom teachers in core instructional course, SED notes this recommendation can be considered in Commissioner's class size panel's deliberations

4. In response to comment that NYC be required to maintain effort despite budget cuts, SED notes that pursuant to recent amendment of Education Law § 211-d, all contract districts are required under the 2008-2009 application system to maintain base year contract amount of expenditures, allowing for reallocation to other approval program areas.

Other comments were deemed to not require changes to the regulations, because SED deemed the existing regulation provisions to be sufficient to address the comments concerns, or disagreed with comments. These include: (1) parents should be allowed to comment on class size reduction plan; and (2) capital plan should be aligned with class size reduction plan; and (3) hold NYC to class size standards at beginning of school year.

IV. English Language Learners (ELL)

1. In response to comment to require district and school level expenditure projections/reports to outline the amount of funds serving ELL's, as well as data on students served, teachers/staff hired, programs established or expanded, class size reductions and focused professional development hours, SED notes these comments will be taken into account as options are developed for ELL allowable programs.

2. In response to comment to expand allowable activities under the existing five contract program areas, to include ELL-focused strategies: more teachers; teacher recruitment/retention; professional development; extended school day, Saturday academy and Summer School; books and learning resources in various languages; students with interrupted formal education intervention and instruction; develop appropriate tests and monitor instruction and assessment implementations; guidance, mentoring and social support services for immigrant/ELL youth; high school readiness and dropout prevention; immigration/LEP parent engagement and leadership training, SED notes that consistent with recent amendment to Education Law section 211-d, the regulation has been revised to add a sixth category of allowable programs and services to provide for model programs for students with limited English proficiency, Including programs serving limited English proficient students, native language support, new immigrant programs, recruitment and retention of bilingual general education and special education teachers, English as a Second Language teachers, bilingual teachers of students with speech and language disabilities, and bilingual pupil personnel staff, and parent involvement.

Other comments were deemed to not require changes to the regulations, because SED deemed the existing regulation provisions to be sufficient to address the comments concerns, or disagreed with comments. These include: (1) establish separate "predominately benefit" ELL benchmark; and (2) add ELL students who have not achieved sufficient scores on the limited English proficiency test to the definition of "students with low academic achievement."

V. Contract Approval and Amendment

1. In response to comment that limiting contract funds to five allowable programs limits districts' ability to continue systemic reform, SED notes that, consistent with the recent amendment to Education Law § 211-d, the regulation has been revised to provide for a sixth allowable program for LEP model programs. Any additional programs would require statutory change.

2. In response to comment that SED's approval needed for any district's reallocation of last year's contract funds to an allowable program, SED agrees and notes this is being incorporated into the 2008-2009 application system.

Other comments were deemed to not require changes to the regulations, because SED deemed the existing regulation provisions to be sufficient to address the comments concerns, or disagreed with comments. These include: (1) amendment process be more flexible and clarify amendment provisions; and (2) provide for 30-day public comment period once contracts are submitted to commissioner; and (3) specify date for SED contract approval notification.

VI. Allocation, Targeting and Maintenance of Effort

1. In response to comment to clarify "contract amount" to provide for second year contract for excellence requirements enacted by recent amendments to Education Law § 211-d, SED notes proposed rule will be revised to refer to annual contract amount.

2. In response to comment that performance or achievement goals are not enough, and that there needs to be measures of inputs as well, SED agrees and notes this has been incorporated in the web-based reporting system consistent with statutory requirements.

3. In response to comment to revise applicability provisions to also include schools that are below the school district (or State) average on the ELA and Math assessment or the 4-year graduation rate, SED notes regulation has been revised in response to recent amendments to Education Law § 211-d to delete specific applicability provisions in the regulation, and instead reference the statute for purposes of determining applicability.

4. In response to comment to allow schools to target funds to predominately benefit students having the greatest educational needs who are enrolled in schools identified under section 100.2(p) and not only to students enrolled in SURR schools, SED agrees and notes that the reference to SURR schools was just an example of acceptable strategies, and does not preclude others.

A comment that cap for maintenance of existing programs be changed to 25% for all districts, would require a statutory change.

Other comments were deemed to not require changes to the regulations, because SED deemed the existing regulation provisions to be sufficient to address the comments concerns, or disagreed with comments. These include: (1) that large city school districts outside NYC should be allowed to use funds for district-wide initiatives; (2) provide that schools in improvement status shall receive at least pro rata share based on share of actual high need, low-performing students, instead of share of total district need; (3) include contract terms in each school's comprehensive education plan; and (4) regulation's lack of specificity resulted in non-uniform response from districts and in may cases lacked transparency.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Teacher Tenure Determinations

I.D. No. EDU-14-08-00009-RP

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

Revised action: Amendment of Part 30 and section 100.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 3012-b, as amended by L. 2008, ch. 57

Subject: Teacher tenure determinations.

Purpose: To establish minimum standards for teacher tenure determinations in order to implement the requirements of section 3012-b of the Education Law.

Text of revised rule:

1. The title of Part 30 is amended, effective October 9, 2008, to read as follows:

Part 30

Tenure [Areas]

2. Each respective section of Part 30 of the Rules of the Board of Regents is renumbered to be a respective section of a new Subpart 30-1 of the Rules of the Board of Regents, effective October 9, 2008.

3. The title of new Subpart 30-1 is added, effective October 9, 2008, to read as follows:

Subpart 30-1

Tenure Areas

4. Subdivision (h) of renumbered section 30-1.1 is amended, effective October 9, 2008, to read as follows:

(h) Tenure area means the administrative subdivision within the organizational structure of a school district in which a professional educator is deemed to serve in accordance with the provisions of this [Part] *Subpart*.

5. Renumbered section 30-1.2 is amended, effective October 9, 2008, to read as follows:

30-1.2 Applicability.

(a) The provisions of this [Part] *Subpart* shall apply to all probationary appointments to professional education positions made by a board of education or a board of cooperative educational services by resolution on or after August 1, 1975 and to appointments on tenure based upon such probationary appointments.

(b) Each board of education or board of cooperative educational services shall on and after the effective date of this [Part] *Subpart* make probationary appointments and appointments on tenure in accordance with the provisions of this [Part] *Subpart*.

(c) This [Part] *Subpart* shall not be applicable to city school districts located within cities having a population in excess of 400,000 inhabitants or to school districts employing fewer than eight teachers.

6. Subdivisions (a), (c) and (d) of renumbered section 30-1.9 are amended, effective October 9, 2008, to read as follows:

(a) A board of education or a board of cooperative educational services shall appoint and assign a professional educator in such a manner that he shall devote a substantial portion of his time throughout the probationary period in at least one designated tenure area except that a professional educator who teaches in an experimental program as defined in subdivision (i) of section [30.1] *30-1.1* of this [Part] *Subpart* and who does not devote 40 percent or more of his time to service in any one tenure area may be appointed to a tenure area for which he holds the proper certification.

(c) If a professional educator possesses certification appropriate to more than a single tenure area and the board of education or board of cooperative educational services proposes at the time of initial appointment to assign such individual in such a manner that he will devote a substantial portion of his time during each of the school years constituting the probationary period in more than one of the tenure areas established by this [Part] *Subpart*, the board shall in its resolution of appointment designate each such tenure area and shall thereafter separately confer or deny tenure to such individual in the manner prescribed by statute in each designated tenure area.

(d) Where a board of education or board of cooperative educational services proposes to assign a professional educator having tenure or in probationary status in a tenure area created by this [Part] *Subpart* in such a manner that he will devote a substantial portion of his time in a tenure area to which he has not previously been appointed, the board shall prior to such assignment confer a probationary appointment in accordance with section [30.3] *30-1.3* of this [Part] *Subpart*, designating such additional tenure area. Thereafter, the board shall separately confer or deny tenure to such individual in the designated tenure area in the manner prescribed by statute.

7. Renumbered section 30-1.10 is amended, effective October 9, 2008, to read as follows:

Where a professional educator acquires tenure in a tenure area created by this [Part] *Subpart*, he shall retain such tenure while he remains continuously employed by the board of education or board of cooperative educational services as a full-time member of the professional staff of the district, notwithstanding subsequent appointments to tenure or to probation in other tenure areas.

8. Renumbered section 30-1.12 is amended, effective October 9, 2008, to read as follows:

Subject to the provisions of sections 2510 and 2585 of the Education Law, where a board of education, on or after the effective date of this [Part] *Subpart*, modifies the organizational structure of a school in such a manner that instruction in the core academic subjects is departmentalized in a grade or grades previously taught by professional educators deemed to serve in the middle grades tenure area, each tenured professional educator or probationer serving in such grade or grades at the time of such departmentalization shall retain such status and shall be eligible to teach any core academic subject or special subject for which such professional educator possesses appropriate certification; provided that such tenure shall pertain only to grade levels not higher than those formerly associated with the middle grades tenure area in such school district.

9. Subdivision (c) of renumbered section 30.13 is amended, effective October 9, 2008, to read as follows:

(c) Should the individual so identified have tenure or be in a probationary status in additional tenure areas created by this [Part] *Subpart*, he shall be transferred to such other tenure area in which he has greatest seniority and shall be retained in such area if there is a professional educator having less seniority than he in such other tenure area.

10. A new Subpart 30-2 is added, effective October 9, 2008, to read as follows:

Teacher Tenure Determinations

§ 30-2.1 Definitions.

As used in this Subpart:

(a) Teacher means a teacher in the classroom teaching service, as that term is defined in section 80-1.1 of the Regulations of the Commissioner.

§ 30-2.2 Applicability.

(a) This Subpart shall apply only to the extent Education Law section 3012-b remains in effect.

(b) The provisions of this Subpart shall apply to tenure determinations for teachers of all school districts and boards of cooperative educational services whose probationary periods commence on or after July 1, 2008.

(c) Nothing herein shall be construed to make the requirements of this Subpart applicable to teaching assistants, administrative or supervisory staff or pupil personnel service providers.

(d) Each school district and board of cooperative educational services shall in accordance with section 3012-b of the Education Law make tenure determinations for teachers whose probationary periods commence on or after July 1, 2008 in accordance with the provisions of this Subpart.

§ 30-2.3 Minimum Standards for Tenure Determinations for Teachers.

(a) A superintendent of schools or district superintendent of schools, prior to recommending tenure for a teacher, shall evaluate all relevant factors, including the teacher's effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students. When evaluating a teacher for tenure, each school district and board of cooperative educational services shall utilize a process that complies with subdivision (b) of this section.

(b) The process for evaluation of a teacher for tenure shall be consistent with article 14 of the Civil Service Law and shall include a combination of the following minimum standards:

(1) evaluation of the extent to which the teacher successfully utilized analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition concerns, or other student characteristics affecting learning) when providing instruction but the teacher shall not be granted or denied tenure based on student performance data;

(2) peer review by other teachers, as far as practicable; and

(3) an assessment of the teacher's performance by the teacher's building principal or other building administrator in charge of the school or program, which shall consider all the annual professional performance review criteria set forth in section 100.2(o)(2)(iii)(b)(1) of the Regulations of the Commissioner.

(c) Nothing herein shall be construed to impose a mandatory collective bargaining obligation, over any locally developed standards, that is not required by article 14 of the Civil Service Law.

(d) The trustees and board of education of every school district and every board of cooperative educational services, and the chancellor of a city school district of a city with a population of one million or more shall, consistent with existing contractual provisions, make any changes in local rules, regulations and policies that are necessary to ensure that tenure determinations for teachers whose probationary periods commence on or after July 1, 2008 shall be made in compliance with section 3012-b of the Education Law and this section.

11. Item (vi) of subclause (1) of clause (b) of subparagraph (iii) of paragraph (2) of subdivision (o) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective October 9, 2008, as follows:

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning *and that he or she successfully utilizes analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction.*

Revised rule compared with proposed rule: Substantial revisions were made in sections 30-2.2(a), (b), (d), 30-2.3(b)(1), (d) and 100.2(o)(2)(ii)(*b*)(*1*)(*vi*).

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@ mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on April 2, 2008, the following substantial revisions were made to the proposed rule:

The rule was revised, in response to Chapter 57 to the Laws of 2008, to state that Subpart 30-2, relating to teacher tenure determinations, shall only apply to the extent Education Law § 3012-b remains in effect.

In order to conform to Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, the rule was revised to reflect that the provisions of Subpart 30-2 shall apply to tenure determinations for teachers of all school districts and boards of cooperative educational ser-

vices whose probationary periods commence on or after July 1, 2008; as opposed to tenure determinations made on or after July 1, 2008 as required under the previous version of the rule.

Section 30-2.3(b) of the rule was revised to delete the reference to "but need not be limited to", in order to conform to the requirements of 3012-b of the Education Law and to state that the process for evaluation of a teacher for tenure shall include a combination of the minimum standards set forth in paragraphs (1), (2) and (3) of subdivision (b) of this section.

Sections 30-2.3(b)(1) and 100.2 of the previous version of the rule were revised to amend the phrase "such as" to "for example".

Section 30-2.3(b)(1) was also revised to prohibit teachers from being granted or denied tenure based on student performance data, in order to conform with Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008.

The above revisions to the proposed rule require that the "Statutory Authority", "Legislative Objectives", "Needs and Benefits", "Costs", "Local Government Mandates", and "Compliance Schedule" sections of the previously published Regulatory Impact Statement be revised to read as follows:

1. STATUTORY AUTHORITY:

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

Section 3012-b of the Education Law, as added by Section 9 of Part A of Chapter 57 of the Laws of 2007 and amended by Chapter 57 of the Laws of 2008, establishes the minimum standards for tenure determinations for teachers whose probationary period commences on or after July 1, 2008.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by establishing minimum standards for tenure determinations for teachers whose probationary period commences on or after July 1, 2008.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to implement the requirements of Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, by establishing the minimum standards for tenure determinations for teachers whose probationary period commences on or after July 1, 2008.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, may impose costs on local governments, over and above the current costs for making tenure determinations, depending on the current practices followed by school districts and BOCES. However, the proposed amendment will not impose any additional costs, beyond those imposed by the statute.

(c) Costs to private regulated parties: The proposed amendment will not impose any additional costs on private regulated parties, beyond those imposed by the statute.

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

5. LOCAL GOVERNMENT MANDATES:

Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, requires a superintendent of schools or district superintendent of schools, to evaluate all relevant factors prior to recommending a teacher for tenure, including an evaluation of the candidate's effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students.

Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, requires all school districts and boards of cooperative educational services, when evaluating a teacher for tenure to: (1) evaluate the extent to which the teacher successfully utilized analysis of available student performance data and other relevant information when providing instruction but the teacher shall not be granted or denied tenure based on student performance data; (2) consider peer review by other teachers, as far as practicable; and (3) provide an assessment of the teacher's performance by the teacher's building principal or other building administrator. The proposed amendment aligns the Regents Rules with the statutory requirements and requires the use of the Annual Professional Performance Review criteria set forth in Section 100.2 of the Regulations of the Commissioner of Education in tenure determinations, which has been a regulatory requirement since 2000.

Consistent with the statute, the proposed Rule would permit the consideration of locally developed standards. This approach would not prescribe the types of locally developed standards designed to measure a teacher's effectiveness in contributing to the successful academic performance of his or her students but does prohibit a teacher being granted or denied tenure based on student performance data. Such locally developed standards may or may not be mandatory subjects of collective bargaining.

The proposed amendment further clarifies that school districts and BOCES shall, when making a tenure determination, consider available student performance data (for example: State test results, student work, school-developed assessments, etc.) and other relevant information (for example: documented health or nutrition concerns or other student characteristics affecting learning) but the teacher shall not be granted or denied tenure based on student performance data.

To be consistent with the new statute, an amendment was also made to Section 100.2 of the Regulations of the Commissioner of Education, to the "student assessment" factor of the Annual Professional Performance Review regulations to explicitly mention the teacher's use of available student performance data and other relevant information when providing instruction.

10. COMPLIANCE SCHEDULE:

School districts and boards of cooperative educational services will be required to comply with the proposed amendment on its stated effective date in order to comply with section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on April 2, 2008, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the "Small Businesses", "The Effect of the Rule" and the "Compliance Requirements for Local Governments" sections of the previously published Regulatory Flexibility Analysis be revised to read as follows:

(a) Small Businesses:

The proposed amendment applies to school districts and boards of cooperative educational services (BOCES) and relates to standards for teacher tenure determinations in order to implement the requirements of section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to the 698 school districts and seven BOCES located in New York State and relates to standards for teacher tenure determinations in order to implement the requirements of section 3012-b of the Education Law, as amended by Chapter 57of the Laws of 2008.

2. COMPLIANCE REQUIREMENTS:

Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, requires a superintendent of schools or district superintendent of schools, to evaluate all relevant factors prior to recommending a teacher for tenure, including an evaluation of the candidate's effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students.

Section 3012-b of the Education Law requires all school districts and BOCES, when evaluating a teacher for tenure to: (1) evaluate the extent to which the teacher successfully utilized analysis of available student performance data and other relevant information when providing instruction but the teacher shall not be granted or denied tenure based on student performance data; (2) conduct peer review by other teachers, as far as practicable; and (3) provide an assessment of the teacher's performance by the teacher's building principal or other building administrator. The proposed amendment aligns the Regents Rules with the statutory requirements and requires the use of the Annual Professional Performance Review criteria set forth in Section 100.2 of the Regulations of the Commissioner of Education when making tenure determinations, which has been a regulatory requirement since 2000.

The proposed amendment also clarifies that school districts and BOCES shall consider available student performance data (for example: State test results, student work, school-developed assessments, etc.) and any other relevant information (for example: documented health or nutrition concerns, or other student characteristics affecting learning) when making teacher tenure determinations but the teacher shall not be granted or denied tenure based on student performance data.

To be consistent with the new statute, an amendment was also made to Section 100.2 of the Regulations of the Commissioner of Education, to the "student assessment" factor of the Annual Professional Performance Review regulations, to explicitly mention the teacher's use of student performance data and other relevant information when providing instruction but the teacher shall not be granted or denied tenure based on student performance data.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on April 2, 2008, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the "Reporting, Recordkeeping, and other Compliance Requirements and Professional Services" and "Costs" sections of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, requires a superintendent of schools or district superintendent of schools, to evaluate all relevant factors prior to recommending a teacher for tenure, including an evaluation of the candidate's effectiveness over the applicable probationary period, or over three years in the case of a regular substitute with a one-year probationary period, in contributing to the successful academic performance of his or her students.

Section 3012-b of the Education Law requires all school districts and BOCES, when evaluating a teacher for tenure to: (1) evaluate the extent to which the teacher successfully utilized analysis of available student performance data and other relevant information when providing instruction but the teacher shall not be granted or denied tenure based on student performance data; (2) conduct peer review by other teachers, as far as practicable; and (3) provide an assessment of the teacher's performance by the teacher's building principal or other building administrator. The proposed amendment aligns the Regents Rules with the statutory requirements and requires the use of the Annual Professional Performance Review criteria set forth in Section 100.2 of the Regulations of the Commissioner of Education when making tenure determinations, which has been a regulatory requirement since 2000.

The proposed amendment also clarifies that school districts and BOCES shall consider available student performance data (for example: State test results, student work, school-developed assessments, etc.) and any other relevant information (for example: documented health or nutrition concerns or other student characteristics affecting learning) when providing instruction but the teacher shall not be granted or denied tenure based on student performance data.

To be consistent with the new statute, an amendment was also made to Section 100.2 of the Regulations of the Commissioner of Education, to the "student assessment" factor of the Annual Professional Performance Review regulations, to explicitly mention the teacher's use of student performance data to inform future instruction.

The amendment does not impose recordkeeping requirements or require candidates seeking certification to retain professional services in order to comply.

3. COSTS:

Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008, may impose costs on private regulated parties, over and above the current costs for making tenure determinations, depending on the current practices followed by school districts and BOCES. However, the proposed amendment will not impose any additional costs, beyond those imposed by the statute.

Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the *State Register* on April 2, 2008, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to teacher tenure determinations. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-23-08-00005-E
Filing No. 442
Filing date: May 19, 2008
Effective date: May 19, 2008

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

Action taken: Addition of Part 402 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2899-a(4); and Executive Law, section 845-b(12)

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

Specific reasons underlying the finding of necessity: Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

Subject: Criminal history record check.

Purpose: To perform criminal background checks of certain prospective employees of NHs, CHHAs, LHCSAs and long term home health care programs.

Substance of emergency rule: This regulation adds a new Part 402 to Title 10 NYCRR, which relates to prospective unlicensed employees of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers.

The regulation establishes standards and procedures for criminal history record checks required by statute. Provisions govern the procedures by which fingerprints will be obtained and describe the requirements and responsibilities of the Department and the affected providers with regard to this process. The regulations address the identification of provider staff responsible for requesting the criminal history checks, supervision of temporary employees, notice to the Department when an employee is no longer employed, the content and procedure for obtaining consent and acknowledgment for finger printing from prospective employees. The Department's responsibilities for reviewing requests are set forth and specify time frames and sufficient information to process a request.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 16, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Bureau of House Counsel, Reg. Affairs Unit, Rm. 2438, Empire State Plaza, Tower Building, Albany, NY 12237, (518) 473-7488, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivisions (3) and (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate up to two "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. Two sets of fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-B of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law. For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

COSTS:

Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, $75 to cover the projected fee established by the Division for processing a State criminal history record check, and a $19.25 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be $13.00 per print. The total annual cost to providers is estimated to be approximately $12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately $6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately $6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately $6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately $2.3 million will be borne entirely by the State.

Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately $700,000 (See "Costs to State Government").

Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately $2.8 million.

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities

upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Paperwork:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

The regulations also contain a requirement to keep a current roster of subject parties.

Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

Federal Standards:

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

Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department provided an intensive orientation of program operations to those providers affected by criminal history record program.

Information was provided and continues to be provided to providers about implementation; process and procedures; and compliance with rules and regulations through a message board, staff attendance at trade association meetings, dear administrator letters, a training script or frequently asked questions document, and a dedicated e-mail log.

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon publication of a Notice of Adoption in the New York *State Register*.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered "small businesses," and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee's eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs which are unable to access reimbursement from state and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See "Regulatory Impact Statement - Costs to State Government").

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional "ink and roll" process. Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. Two cards would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint cards is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b (1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Small Businesses and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population less that 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000:

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

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

Albany, Erie, Oneida, Broome, Monroe, Onondaga, Dutchess, Niagara, Orange

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

Compliance Costs:

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See "Regulatory Impact Statement - Costs to State Government").

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

Job Impact Statement

A Job Impact statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 does not have any adverse impact on the unlicensed employees hired before September 1, 2006 as they apply only to future prospective unlicensed employees. The number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

Since the inception of the program approximately 14% of all unlicensed employees applying for positions with nursing homes or home health care providers were found to have a criminal record barring such employment.

NOTICE OF ADOPTION

Licensed Home Care Services Agency Regulations

I.D. No. HLT-01-08-00022-A
Filing No. 458
Filing date: May 20, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of sections 763.12, 766.10 and 766.12 of Title 10 NYCRR.

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

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

Purpose: To require LHCSAs to submit annual cost reports and comply with annual administrative and general cost requirements applied to CHHAs.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-01-08-00022-P, Issue of January 2, 2008.

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

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

Assessment of Public Comment

The Department received comments from 29 individuals/organizations in regard to the Licensed Home Care Service Agency (LHCSA) Reporting Requirement regulation. The Department believes this regulation simply fulfills the statutory requirement of Chapter 606 of the Laws of 2003, establishing Public Health Law (PHL) Section 3612(3) and (6), and that most of the comments submitted are actually in opposition to the statute. The specific issues raised and responses to those issues follow:

Comment:

In response to the provision that would require certified home health agencies (CHHAs) to provide their subcontracting LHCSAs with all information necessary for the LHCSA to meet the new reporting requirement, virtually all comments received emphasized that contractual arrangements between CHHAs and LHCSAs are private arrangements and the reimbursement rates contained within such contracts privately negotiated. Likewise, the commenters also stated concerns that the information to be reported is proprietary and should be protected from public viewing. As such, the commenters stated that it is inappropriate for the State to involve itself in private business matters.

Response:

The Department is mandated by the 2003 statute to require LHCSAs to annually report on the type, frequency and reimbursement for services provided, including reimbursement from federal and state governmental agencies. In order for LHCSAs to report the mandated information accurately and in its entirety, they must have cooperation from the CHHAs with which they contract. With regard to protecting this information from public viewing, the Department notes that public disclosure is required by PHL 3612(3). Moreover, the information to be reported by LHCSAs in the annual statistical report is aggregate in nature, and will not reveal any proprietary information specific to a particular CHHA/LHCSA relationship. By contrast, PHL Article 28 and 44 entities have historically been required to report to the State specific information by contract, and such information is disclosed to the public without redaction.

Comment:

Most raised the comment that it is inappropriate for the State to require a business (*i.e.,* LHCSA) that is not a direct biller of the government payor program to be subjected to State reporting requirements.

Response:

The requirement for LHCSAs to report such information was mandated by the New York State Legislature, and is merely being implemented by the Department via this proposed regulation. While LHCSAs are not a primary biller of Medicaid, except for some who contract with local departments of social services to provide personal care services, they are an ultimate recipient of Medicaid dollars through contracts with certified home health agencies (CHHAs). For all other Medicaid-reimbursable providers in New York state, the Department has authority to request and receive information pertaining to revenue. Extending this authority to LHCSAs is wholly within the purview of the Department.

Comment:

Most also commented that the additional reporting requirements will cost the LHCSA more administrative dollars at the same time such expenditures are being capped, while shifting the LHCSA's focus to paperwork rather than patient care.

Response:

Since this regulatory proposal first began its process toward promulgation three years ago, the Department has made amendments to address industry concerns while still meeting the statutory requirement. Those amendments included clarifying that the Department would be seeking this additional information through the existing reporting mechanism and not through an entirely new report, and continuing to allow the reporting of this data in the aggregate by the LHCSA's main office rather than by each licensed site as had been originally proposed.

Comment:

One comment stated that since reimbursement received by CHHAs for the delivery of Medicaid services is already subject to a cap on administrative and general (A&G) costs, the proposed regulation is redundant and unnecessary. Similarly, another commented that imposition of such a cap is unsound, and would unjustifiably reduce or limit reimbursement to LHCSAs.

Response:

Chapter 606 of the Laws of 2003 explicitly requires the Department to establish an A&G cap for LHCSAs. As stated in PHL 3612(6): "The commissioner shall adopt rules and regulations for licensed home care services agencies which establishes a cap on administrative and general costs for such agencies equal to the cap on administrative and general costs applied to certified home health agencies in accordance with subdivision seven of section thirty-six hundred fourteen of this article."

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adjustments to Income—Tuition Assistance Program (TAP)

I.D. No. ESC-23-08-00004-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 repeal section 2202.3(e)(1)(v) and (vi) of Title 8 NYCRR.

Statutory authority: Education Law, sections 653(9), 655(4) and 663(5)(c)

Subject: Adjustments to income—Tuition Assistance Program (TAP).

Purpose: To amend the regulation to remove references to expired statutory language regarding adjustments for change in circumstance.

Text of proposed rule:

Section 2202.3 of Title 8 of the New York Code, Rules and Regulations is hereby amended to read as follows:

Section 2202.3 Adjustments to income.

Adjustments to the income information reported may be made upon the following criteria:

(a) An adjustment may be made to parent's income based upon the eligible attendance of a parent or other dependent child of a parent, pursuant to subdivision 5 of section 663 of the Education Law.

(b) An adjustment may be made to the income of the applicant and spouse based upon the eligible attendance of such spouse or a dependent child of the applicant, pursuant to subdivision 5 of section 663 of the Education Law.

(c) For the purposes of subdivisions (a) and (b) of this section, a dependent child shall be a child who does not satisfy the criteria of section 2202.4 of this Part, pertaining to the financial independence of applicants.

(d) For the purposes of subdivisions (a) and (b) of this section, eligible attendance shall be full-time matriculated attendance in a program of post-secondary study which is approved for the receipt of Federal-guaranteed student loans, State-guaranteed student loans or Federal basic educational opportunity grant program awards, except for institutions, such as military academies, where no student charges for tuition, or room and board are made.

(e) Adjustments for change in circumstance.

(1) Any change in the status of an applicant, or of any person whose income was required to be included in the computation of the applicant's general award or regents scholarship, which occurs on or after January first preceding the academic year for which the application is filed with the corporation and before the first day of any term for which the award is granted, will be considered in computing an adjustment of the applicant's award for that term, provided that the change in status was caused by such person's:

(i) death;

(ii) permanent and total physical or mental disability;

(iii) divorce; *or*

(iv) separation by judicial decree or pursuant to an agreement of separation which is filed with a court of competent jurisdiction[;] .

[(v) catastrophic illness of the applicant; or

(vi) the applicant or the applicant's spouse is called to active military duty as defined pursuant to subdivision 6 of section 1 of the Military Law. The term active military duty shall be synonymous with the term "active military service" as defined in subdivision 8 of section 1 of the Military Law.]

(2) The corporation may require such documentary evidence, testimony or affidavits as it deems sufficient in granting such an adjustment of an award.

(3) Adjustments shall be computed by adjusting the reported taxable income of the person whose circumstances have changed to reflect the increase or diminution of income available to the applicant during the term for which an award is made. The amount of income of such person to be included in the computation of the applicant's award shall be any support payments to be received from the noncustodial parent for the benefit of the applicant during the balance of the calendar year, plus the result of the following calculation:

(taxable income reported for base tax year) x ((number of full months status unchanged)/ (18 months))

(4) Base tax year shall mean the tax year preceding the academic year for which an award is requested.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Acting General Counsel, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: regcomments@hesc.org

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

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

Consensus Rule Making Determination

This statement is being submitted pursuant to paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's ("HESC") Notice of Proposed Rule Making seeking to amend section 2202.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Chapter 58 of the Laws of 2006 added new paragraph c to subdivision 5 of section 663 of the Education Law. The paragraph allowed HESC to adjust an applicant's income for the purposes of the Tuition Assistance Program ("TAP") to reflect an unexpected reduction in his or her financial circumstances. This statutory amendment broadened HESC's ability to adjust income for applicants experiencing catastrophic illness or being called to active military duty and, as a result increase an applicant's TAP award accordingly. Pursuant to Chapter 58 of the Laws of 2006, Education Law section 663(5)(c) expired and was deemed repealed June 30, 2007.

Since paragraph c of subdivision 5 of section 663 of the Education Law is no longer in effect, this proposed consensus rule removes references to the expired statutory language from 8 NYCRR § 2202.3(e)(1). HESC is pursuing this consensus rulemaking as defined in section 102(11) of the State Administrative Procedure Act as it has determined that no person is likely to object to the proposed rule as this rulemaking seeks to amend HESC's regulations consistent with the current statutory provisions contained in the Education Law.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to amend section 2202.3 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. This consensus rule amends section 2202.3(e)(1)(v) and (vi) to remove references to expired statutory language regarding adjustments for change in circumstance since the law that authorized these adjustments is no longer in effect.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements Related to Problem and Compulsive Gambling Treatment Programs

I.D. No. OMH-23-08-00006-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 repeal Part 509 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 32.02

Subject: Requirements related to problem and compulsive gambling treatment programs.

Purpose: To repeal a rule which is no longer applicable to the Office of Mental Health.

Text of proposed rule: Part 509 of Title 14 NYCRR is repealed.

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: cocbjdd@omh.state.ny.us

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

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

Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to repeal a provision that is no longer applicable to any party, and it is otherwise non-controversial. Section 14 of Part I of Chapter 58 of the Laws of 2005 placed the responsibility for the development of plans, programs and services relating to compulsive gambling education and treatment with the New York State Office of Alcoholism and Substance Abuse Services (OASAS), with a sunset date of April 1, 2009. Chapter 58 of the Laws of 2008 (Part D) removed this sunset date, meaning that OASAS has permanent responsibility for implementation of this program. Research and literature continue to show that a gambling addiction has similar psychological and physical manifestations as an addiction to alcohol or other substance; therefore, OASAS is the appropriate State agency to oversee this program. Since the New York State Office of Mental Health no longer has responsibility for problem and compulsive gambling treatment programs, Part 509 of 14 NYCRR must be repealed. As the requirements specified in said Part are no longer applicable to any party, this rulemaking is non-controversial and is appropriately filed as a Consensus rule.

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

Section 32.02 of the Mental Hygiene Law grants the Commissioner of the Office of Alcoholism and Substance Abuse Services (OASAS) the authority and responsibility to adopt any regulation reasonably necessary to regulate and ensure high quality of services to individuals suffering from compulsive gambling.

Job Impact Statement

It is clear from the nature of this regulatory amendment, which simply repeals a Part no longer applicable to the Office of Mental Health, that there will be no adverse impact on jobs or employment opportunities in New York State.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-23-08-00003-P

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

Proposed action: Update service tariffs NS-1, NS-2, NS-3, SL-1 and SL-2, the service tariffs applicable to the Power Authority's neighboring states customers.

Statutory authority: Public Authorities Law, section 1005(13); and L. 1987, ch. 32

Subject: Rates for the sale of power and energy.

Purpose: To update neighboring states service tariffs to streamline them and include additional required information.

Substance of proposed rule: Pursuant to the New York Public Authorities Law, Section 1005(13) and Chapter 32 of the Laws of New York of 1987, the Power Authority of the State of New York (the "Authority") proposes to amend the Authority's current production service tariffs applicable to its Neighboring States customers. The Authority proposes to reformat the service tariffs for easier reading, group provisions that relate to each other, include any new provisions that might affect these customer groups and add frequently used abbreviations and terms. Written comments on the proposed tariffs will be accepted through Monday, July 21, 2008, at the address below.

For further information, contact: Power Authority of the State of new York, Anne B. Cahill, Corporate Secretary, 123 Main Street, 15M, White Plains, New York 10601, (914) 390-8036, (914) 681-6949 (fax), secretarys.office@nypa.gov

Text of proposed rule and any required statements and analyses may be obtained from: Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

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

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

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-51-98-00034-W	December 23, 1998
PSC-34-00-00015-W	August 23, 2000
PSC-35-00-00028-W	August 30, 2000
PSC-35-00-00029-W	August 30, 2000
PSC-35-00-00030-W	August 30, 2000
PSC-35-00-00031-W	August 30, 2000
PSC-35-00-00032-W	August 30, 2000
PSC-35-00-00033-W	August 30, 2000
PSC-35-00-00034-W	August 30, 2000
PSC-35-00-00035-W	August 30, 2000
PSC-35-00-00036-W	August 30, 2000
PSC-35-00-00037-W	August 30, 2000
PSC-35-00-00038-W	August 30, 2000
PSC-35-00-00039-W	August 30, 2000
PSC-35-00-00040-W	August 30, 2000
PSC-35-00-00041-W	August 30, 2000
PSC-35-00-00042-W	August 30, 2000
PSC-35-00-00043-W	August 30, 2000
PSC-35-00-00044-W	August 30, 2000
PSC-35-00-00045-W	August 30, 2000
PSC-35-00-00046-W	August 30, 2000
PSC-35-00-00047-W	August 30, 2000
PSC-35-00-00048-W	August 30, 2000
PSC-35-00-00049-W	August 30, 2000
PSC-35-00-00050-W	August 30, 2000
PSC-35-00-00051-W	August 30, 2000
PSC-35-00-00052-W	August 30, 2000
PSC-35-00-00053-W	August 30, 2000
PSC-35-00-00054-W	August 30, 2000
PSC-35-00-00055-W	August 30, 2000
PSC-35-00-00056-W	August 30, 2000
PSC-35-00-00057-W	August 30, 2000
PSC-35-00-00058-W	August 30, 2000
PSC-35-00-00059-W	August 30, 2000
PSC-35-00-00060-W	August 30, 2000

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-23-08-00007-P

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

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

Plaza Preservation, LP, to submeter electricity at Linden Plaza, Brooklyn, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Linden Plaza Preservation, LP to submeter electricity at Linden Plaza, Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Linden Plaza Preservation, LP, to submeter electricity at Linden Plaza, Brooklyn, 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. Brilling, 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-0433SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition Requesting Rehearing and Clarification of the Commission's April 25, 2008 Order Denying Petition of Public Utility Law Project

I.D. No. PSC-23-08-00008-P

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

Proposed action: The commission is considering whether to grant or deny, in whole or in part, the May 7, 2008 Public Utility Law project (PULP) petition for rehearing and clarification of the commission's April 25, 2008 order denying petition of Public Utility Law project.

Statutory authority: Public Service Law, section 22

Subject: Petition requesting rehearing and clarification of the commission's April 25, 2008 order denying petition of Public Utility Law project.

Purpose: To consider whether to grant or deny, in whole or in part, the May 7, 2008 Public Utility Law project (PULP) petition for rehearing and clarification of the commission's April 25, 2008 order denying petition of Public Utility Law project.

Substance of proposed rule: The Public Service Commission (the Commission) is considering whether to grant or deny, in whole or in part, the May 7, 2008 Public Utility Law Project (PULP) Petition for Rehearing and Clarification of the Commission's April 25, 2008 Order Denying Petition of Public Utility Law Project. The Commission's April 25 Order denied PULP's prior petition for further investigation into assignment, use, or reassignment of NXX codes as unwarranted and without basis for delaying the proceeding to develop a workable plan to provide additional central office and area codes beyond the projected 315 area code exhaust date of 2010.

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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-C-1486SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Transfer of Certain Real Property with an Original Cost Under $100,000 in the Town of Throop

I.D. No. PSC-23-08-00009-P

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

Proposed action: The commission is considering whether to approve, modify or reject, in whole or in part, the filing by Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of certain real property in the Town of Throop.

Statutory authority: Public Service Law, section 70

Subject: The transfer of certain real property with an original cost under $100,000 in the Town of Throop.

Purpose: To consider the filing for the transfer of certain real property in the Town of Throop.

Substance of proposed rule: The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, the filing by Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of two parcels of real property located on Powers Road in the Town of Throop with an original cost of less than one hundred thousand dollars.

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. Brilling, 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-0361SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-23-08-00010-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 Riverview II Preservation, LP, to submeter electricity at 47 Riverdale Ave., Yonkers, 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 Riverview II Preservation, LP, to submeter electricity at 47 Riverdale Ave., Yonkers, 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 Riverview II Preservation, LP, to submeter electricity at 47 Riverdale Avenue, Yonkers, 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. Brilling, 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-0439SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Transfer of Certain Real Property with an Original Cost Under $100,000 in the City of Glens Falls

I.D. No. PSC-23-08-00011-P

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

Proposed action: The commission is considering whether to approve, modify or reject, in whole or in part, the filing by Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of certain real property in the City of Glens Falls.

Statutory authority: Public Service Law, section 70

Subject: The transfer of certain real property with an original cost under $100,000 in the City of Glens Falls.

Purpose: To consider the filing for the transfer of certain real property in the City of Glens Falls.

Substance of proposed rule: The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, the filing by Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of certain real property located at Mohican Street in the City of Glens Falls with an original cost of less than one hundred thousand dollars.

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. Brilling, 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-M-0407SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issues of Stock, Bonds and Other Forms of Indebtedness; Charges

I.D. No. PSC-23-08-00012-P

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

Proposed action: The commission is considering whether to approve, reject or modify, in whole or in part, the petition of Forever Wild Water Company, Inc. for the approval of a loan with the New York State Environmental Facilities Corporation to perform necessary infrastructure upgrades to the water system.

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

Subject: Issues of stock, bonds and other forms of indebtedness; charges.

Purpose: To approve, reject or modify, in whole or in part, Forever Wild Water Company, Inc.'s plan to enter into a loan agreement to upgrade its infrastructure systems.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify, in whole or in part, the petition of Forever Wild Water Company, Inc. (the Company) for approval of a loan with the Environmental Facilities Corporation (EFC) to perform necessary upgrades to its water systems. The Company consists of two separate water systems, the Kitzbuhel System and Signor System. Both systems are in need of repairs to their holding tanks, pumps, pump houses, and electrical services. The total amount of the loan could be $2.1 million. The EFC loan will require the Company to surcharge all the customers in both systems.

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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(08-W-0555SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-23-08-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a tariff revision filed by Forever Wild Water Company, Inc. to make various changes in the rates, charges, rules and regulations in its tariff schedule, P.S.C. No. 3—Water, to become effective Oct. 1, 2008.

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

Subject: Water rates and charges.

Purpose: To increase Forever Wild Water Company, Inc.'s annual revenues by about $167,000 or 140 percent.

Substance of proposed rule: On May 15, 2008, Forever Wild Water Company, Inc. (Forever Wild or the company) filed, to become effective on October 1, 2008, a tariff amendment (Leaf No. 12, Revision 3) to its electronic tariff schedule P.S.C. No. 3—Water. The filed amendment reflects new rates to produce additional annual revenues of about $167,000 or 140%. The company provides unmetered water service to approximately 373 flat rate customers (344 are year-round and 29 are seasonal), located in the Towns of Jay and Wilmington, Essex County. The Company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under File Room—Tariffs. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(08-W-0556SA1)

Department of State

NOTICE OF ADOPTION

Change of Address of the Department of State's Principal Offices

I.D. No. DOS-13-08-00003-A
Filing No. 457
Filing date: May 21, 2008
Effective date: June 4, 2008

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

Action taken: Amendment of Parts 80, 81, 154, 175, 192, 200, 260, 261, 262, 263, 264, 428, 429, 600, 910, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227 and 1240 of Title 19 NYCRR.

Statutory authority: Executive Law, section 91

Subject: Change of address of the Department of State's principal offices.

Purpose: To change the address of the Department of State's principal offices.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-13-08-00003-P, 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: Nathan A. Hamm, Department of State, One Commerce Plaza, 99 Washington Ave., Suite 1120, Albany, NY 12231-0001, (518) 474-6740

Assessment of Public Comment
The agency received no public comment.

State University of New York

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Trustee's Student Activity Fee Policy Relating to the Use of Advisory Referenda

I.D. No. SUN-23-08-00001-P

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

Proposed action: This is a consensus rule making to amend section 302.14 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b), (h)

Subject: Trustee's student activity fee policy relating to the use of advisory referenda.

Purpose: To preclude use of advisory referenda in connection with allocating the activity fee by student government.

Text of proposed rule: 302.14 Student activity fees

(c) Mandatory fees. Where students at a State-operated campus have determined to make the payment of student activity fees mandatory, the appropriation, collection and disbursement of such fees, whensoever collected, shall be governed by the following regulations:

(1)(i) Preparation and certification of the budget. The student government shall prepare and approve a budget governing expenditures from student activity fees in accordance with the constitution and by-laws of the student government, and consistent with the principles of equal opportunity and viewpoint neutrality, prior to registration for each academic year. The constitution and by-laws of such student government shall specify the criteria governing eligibility for funding of and allocations to student organizations from student activity fees. [The student government may provide for use of advisory referenda of the student body with respect to particular funding decisions but may not agree to be bound by such referenda.] *While referenda of the student body may not be used to help determine specific allocations to particular student organizations, mechanisms such as polls or surveys may be used to ascertain student interest and participation in programs or events.* Allocations included in the budget shall fall within programs defined in paragraph (3) of this subdivision. The approved budget shall thereafter be presented to the chief administrative officer prior to the registration for each academic year for review and certification that the allocations from the fee and any proposed sources of revenue are in compliance with the provisions of paragraph (3) of this subdivision. Upon determination by the chief administrative officer, or designee, that the approved budget is in compliance with these regulations, he or she shall so certify, and such certification shall authorize the collection of the fee at registration.

* * *

(3) Use of funds. Funds which are collected under provisions of this section which require every student to pay the prescribed mandatory fee and all revenues generated from use of the fee shall be used only for support of the following programs for the benefit of the campus community:

* * *

(vi) assistance to recognized student organizations including religious student organizations, for the purposes and activities of the organization that are of an educational, cultural, recreational or social nature, and provided further that the criteria for recognition of student organizations, the criteria governing eligibility for funding of and allocations to such student organizations from student activity fees [and the advisory nature of any referenda held by the student government to aid in particular funding decisions] shall be specified in the constitution and by-laws of the student government;

Text of proposed rule and any required statements and analyses may be obtained from: Seth Gilbertson, State University of New York, State University Plaza, S327, Albany, NY 12246, (518) 320-1172, e-mail: Seth.Gilbertson@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.

Consensus Rule Making Determination
The proposed rule will amend provisions of the Trustees' Regulations governing the Student Activity Fee for state-operated campuses of the State University of New York. The amendment is needed to comply with the holding of the United States Court of Appeals for the Second Circuit in the case of Amidon v. Student Ass'n of State University of New York at Albany, 508 F3d 94 [2d Cir. 2007]. State University of New York has determined that no person is likely to object to the rule as written since it merely makes legally-required revisions to Part 302.14 of SUNY's regulations by eliminating language that provides for use of no-longer-permissible advisory referenda and adding language allowing for polls or surveys, which the court in Amidon said were still permissible.

Job Impact Statement
No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule makes legally-required revisions to Part 302.14 of SUNY's regulations by eliminating language that provides for the use of advisory referenda and adding language allowing for polls or surveys. Such a change will not have an impact on the number of jobs or employment.