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; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Banking Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Registration of Domestic Representative Offices

I.D. No. BNK-48-08-00004-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 amend Supervisory Policy G 8 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 132, 258

Subject: Registration of domestic representative offices.

Purpose: Reduce regulatory burden for the establishment of representative offices by domestic banking institutions.

Text of proposed rule: § 8.1 General.

Any banking institution seeking to establish or maintain a representative office [in this State] shall submit the information called for by section 8.3 of this Supervisory Policy to the Superintendent of Banks, at the New York City Office of the Banking Department at the address set forth in section 1.1 of Supervisory Policy G-1.

§ 8.2 Definitions.

For purposes of this Supervisory Policy:

(a) Banking institution means any bank, trust company, savings bank, *and* savings and loan association [, and industrial bank,] chartered under the laws of New York State, [the United States,] Puerto Rico or any other state or territory of the United States.

(b) Representative office means any office located in this State of a banking institution that engages in representational functions (including but not limited to soliciting business, marketing services or acting as liaison with customers) on behalf of the banking institution, but shall not include a branch office of a banking institution or any office that engages solely in administrative or supervisory functions. *A representative office shall also include an office of a New York chartered institution located outside this State that engages in representational functions.*

§ 8.3 Information required.

(a) The information to be supplied to the superintendent pursuant to section 8.1 of this Supervisory Policy shall be in letter form*, shall be submitted prior to the establishment of the office,* and shall include:

(1) address of the representative office;

(2) *for institutions headquartered outside this State,* address of the head office of the banking institution;

[(3) name of the responsible bank officer located in New York State;]

[(4) number of persons employed in the office;]

([5]*3*) complete description of the activities of the representative office;

([6]*4*) *for institutions headquartered outside this State,* opinion of counsel that:

(i) the activities of the representative office are permissible under section 8.4 of this Supervisory Policy; and

(ii) the banking institution has obtained all regulatory approvals required to establish and maintain such representative office.

(b) Any material changes in the above shall be promptly reported to the superintendent.

§ 8.4 Permissible activities.

(a) The activities that may be conducted by a representative office of a banking institution in this State on behalf of such banking institution shall be limited to the following:

(1) approval of loans;

(2) execution of loan documents;

(3) solicitation of loans and, in connection therewith, assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans (including making recommendations with respect to action thereon);

(4) solicitation of purchasers of loans from the banking institution;

(5) solicitation of parties to contract with the banking institution for the servicing of its loans;

(6) solicitation of other banking business on behalf of the banking institution;

(7) conduct of research;

(8) acting as liaison with customers of the banking institution; and

(9) other similar activities.

(b) A representative office of a banking institution may not disburse funds, transmit funds, accept loan repayments, or accept or contract for deposits or deposit-type liabilities on behalf of the banking institution.

§ 8.5 Designation as representative office.

Any representative office subject to registration pursuant to this Supervisory Policy shall designate itself as a representative office on any office sign at its office location, telephone listing, print advertisement and on its stationery. It shall also prominently display a notice at its office location that it is not a branch office of a bank and does not engage in general banking transactions at such office.

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary of the Banking Board, Banking Department, One State Street, New York, NY 10004-1511, (212) 709-1658, email: sam.abram@banking.state.ny.us

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

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

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

Consensus Rule Making Determination

No one is likely to object to the proposed amendments, which make technical changes or are otherwise non-controversial.

Supervisory Policy G 8 describes the process to be followed by a do-

mestic banking institution seeking to formally register with the Department its establishment of a representative office in New York.

The proposed amendments to Supervisory Policy G 8:

(1) Eliminate the requirement that federally chartered banks, which are under the purview of the federal Office of the Comptroller of the Currency with respect to the establishment of branch and other offices, comply with G 8;

(2) Replace the informal notification process followed presently by New York banks establishing out-of-state representative offices by extending the scope of the regulation to expressly include such offices, thus enabling the Department, instead of the bank, to deal with the regulatory process in the host state(s);

(3) Eliminate the opinion of counsel requirement in connection with out-of-state representative office registrations by New York banks;

(4) Make it clear that the information required by the regulation must be submitted prior to the establishment of the office; and

(5) Eliminate the requirement that the application name the responsible bank officer and indicate the number of persons to be employed at the proposed office.

Job Impact Statement

The purpose of the proposed amendments to Supervisory Policy G 8 is to eliminate information no longer deemed necessary in connection with the registration of domestic representative offices and to clarify from which institutions and under what circumstances a formal registration should be required.

Accordingly, a job impact statement is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-05-08-00018-A

Filing No. 1119

Filing Date: 2008-11-07

Effective Date: 2008-11-26

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

Action taken: Amendment of the Rules for the Classified Service in Appendix 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 noncompetitive class.

Text or summary was published in the January 30, 2008 issue of the Register, I.D. No. CVS-05-08-00018-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State Library's Policy and Practice Relating to Borrowing Library Materials

I.D. No. EDU-48-08-00022-P

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

Proposed Action: Amendment of section 92.1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 249 (not subdivided)

Subject: State Library's policy and practice relating to borrowing library materials.

Purpose: To conform Commissioner's Regulations to the State Library's current policy and practice relating to borrowing library materials.

Text of proposed rule: Section 92.1 of the Regulations of the Commissioner of Education is amended, effective March 5, 2009, as follows:

§ 92.1 New York State Library.

(a) Use of library materials at the State Library. All adults may use the resources of the State Library onsite for reference purposes during the hours that the library is open to the public.

(b) Borrowers. [The] *After registering and being approved for borrowing privileges, in the manner as established by the assistant commissioner for libraries or his or her designee, the* following may borrow any circulating library material, provided that they comply with the provisions of this section *and any other library rules in effect*:

(1) Official. Members of the Legislature [,]*;* Regents of the university [,]*;* judges of the Court of Appeals [,]*;* justices of the Supreme Court [,]*;* [and] heads of State departments, commissions and institutions [. Local]*; and local* government historians may borrow circulating materials [for use in connection with their official duties upon application to the State Librarian in a form prescribed by the commissioner]. Permanently appointed State employees may borrow such material [for use in connection with their official duties] under either of the following conditions:

(i) through a library established by a State department or agency, or a library representative designated by the head of a department or agency; or

(ii) to an individual upon registration with the library *with proof that the individual is a permanent employee of State Government* [; registration will be granted upon certification, by a supervisor at the bureau chief level or above, that an individual is currently a permanent employee of a State agency and requires library materials in connection with official duties].

(2) Professional. *New York State* [Licensed] *licensed* physicians and [duly admitted] attorneys *admitted to practice in New York State*, who are residents of New York State, may borrow materials [needed in connection with professional duties].

(3) Institutional. All institutions in the university, registered or accredited by the Regents, and institutions maintained by Federal, State and local governments, and such other libraries as may be so designated by the assistant commissioner for libraries, may borrow from the State Library through library systems or other access points so designated by the assistant commissioner for libraries.

(4) [Individual] *New York State residents*. Individuals may have access to the collections of the State Library through the institutions listed in paragraph (3) of this subdivision *or, New York State residents 18 years old and older upon proof of residency may borrow circulating library materials if borrowed onsite*.

(5) Special permission. Individuals or agencies that do not have access to library services through the means described above may be granted permission to borrow from the State Library, for a limited period, at the discretion of the assistant commissioner for libraries *or the director of the State Library*.

(c) Loans. [Loans from the State Library are limited to library materials not to be had in local libraries or library systems.] *All individual borrowers and libraries are responsible for material borrowed until the material is returned and for any charges incurred for lost or damaged material*.

(1) Lending period. The [ordinary] *normal* loan period *for individual borrowers* is four weeks [with renewal privilege for two weeks] *and for libraries is six weeks*.

(2) Renewal. [A single renewal] *Material may be renewed* for a period of [two] *four* weeks [may be secured]. However, prior reservation by another patron will take precedence over renewal.

(3) Recall. All library materials are subject to recall at any time and, when recalled, must be returned at once.

(4) Library materials not returned. Any library materials not returned within [one week after notice may be sent for at the expense of the borrower, and if not returned within one month] *six weeks after the due date* may be considered lost and the borrower required to pay replacement and processing costs.

(5) *Fines. Any Library materials borrowed by New York State residents under paragraph (4) of subdivision (b) of this section that are not returned on or before the due date are subject to a fine. Upon application for a borrower's card, applicants will be informed of the current fine schedule.*

(6) Penalties. Violation of the provisions of this subdivision may result in suspension of loan privileges [for six months]. Persistent viola-

tion of the provisions of this subdivision shall result in permanent suspension of loan privileges.

[(6)] *(7)* Reserves. Library materials, except those which are deemed restricted under this Part, may be reserved. When reserved material becomes available, the requesting library or individual will be so notified. Reserved material will not be held longer than a week after date of notification.

(d) Interlibrary loans to libraries outside New York State. Materials not readily available elsewhere [and requested for purposes of scholarship and research] will be lent when possible to libraries in other states. The assistant commissioner for libraries may enter into reciprocal borrowing arrangements with other libraries or groups of libraries. *Individuals in states other than New York State may borrow material through interlibrary loan at their local library.*

(e) Restricted materials. Restricted materials shall include:

(1) reference books or books *and other material* in great demand at the State Library, which are lent only under conditions specified by the library;

(2) *most* periodicals and newspapers, bound and unbound, which are not available for loan, [although photocopies or microfilm] *except that microformat of these materials* may be [provided] *loaned* under conditions specified by the library;

(3) manuscripts and books of exceptional rarity or value, which may be used only in the library;

(4) genealogies and local histories, which will be lent only when the library owns duplicate copies *in good condition*;

(5) materials of such fragility, rarity, size or other consideration as to be [unsuitable] *unsuitable* for use outside of the building. The assistant commissioner for libraries may establish terms and conditions for the loan of other materials in special collections of the library [.]*;*

(6) copy 1, or the only copy of a particular State document.

(f) Loan of manuscripts. Manuscripts which are in the custody of the State Library may be loaned to local historical associations, museums, libraries or other responsible educational organizations upon terms and conditions set forth in an agreement between the department, acting through the assistant commissioner for libraries, and the organization requesting the loan, except that loans of the following shall be subject to approval by the Regents:

Journal of the Albany Congress of 1754 (Albany Plan of Union)

Autographs of Signers of Declaration of Independence—Special Collection

Washington Relics, as Authorized to be Purchased for the State Library, Chapter 715, Laws of 1871, and Listed in the Annual Report of the Library for 1873

President Lincoln's First Emancipation Proclamation, September 22, 1862—Original Draft

Text of proposed rule and any required statements and analyses may be obtained from: Lisa Struffolino, State Education Department, Office of Counsel, State Education Bldg., Room 148, Albany, New York 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Jeffery Cannell, Deputy Commissioner, State Education Department, Cultural Education Center, Room 10A33, Albany, New York 12234

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 249 of the Education Law authorizes members of the Legislature, judges of the Court of Appeals, justices of the Supreme Court and heads of State departments to borrow books from the State Library subject to the restrictions and penalties prescribed by the Board of Regents for the safety or greater usefulness of the State Library. Education Law § 249 also authorizes the State Library to lend its books and printed material for a limited time to other individuals and institutions pursuant to the rules and conditions prescribed by the Board of Regents. Further, Education Law § 249 authorizes the lending of such materials to New York State residents free of charge as far as practicable, and authorizes the Board of Regents, in their discretion, to charge a proper fee to nonresidents or for assistance of a personal nature or for other reason not properly an expense to the State, but which may be authorized for the accommodation of users of the library.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the legislative objectives of the above-referenced statutes by conforming the Regulations of the Commissioner of Education to the State Library's current policy and practice relating to borrowing library materials.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to conform the Commissioner's Regulations to the State Library's current policy and practice relating to borrowing library materials. Such current circulation policy increases accessibility to such materials and the efficiency of the borrowing process.

Specifically, the proposed amendment requires that all persons authorized under the Commissioner's Regulations to borrow circulating library materials must first apply for borrowing privileges; eliminates the restriction that authorized State officials may only borrow library materials for work-related purposes, so long as such individuals provide proof they are permanent State employees; and makes permanent a 2004 pilot program that permits New York State residents eighteen years and older to borrow library materials directly from the State Library so long as borrowed onsite and imposes a fine for overdue library materials. The proposed amendment also restricts circulation of the only copy of a State document.

Further, the proposed amendment simplifies certain portions of the circulation policy relating to the renewal and return of such materials and clarifies the intended meaning of certain terms or provisions. In particular, the amendment simplifies the return policy by providing that materials not returned within six weeks after the due date are considered lost and may be replaced at the borrower's expense. Additionally, the amendment clarifies that licensed physicians and attorneys admitted to practice in New York State also have to be residents of the State to borrow library materials. The proposed amendment also makes technical amendments including grammatical and stylistic changes.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government, including the State Education Department. The amendment merely conforms the Commissioner's Regulations to the current policy and practice of the State Library relating to borrowing circulating library materials and does not impose any costs on State government.

(b) Costs to local government: The amendment merely conforms the Commissioner's Regulations to the State Library's current circulation policy and does not impose any additional costs on local government.

(c) Costs to private regulated parties: The amendment merely conforms the Commissioner's Regulations to the State Library's current circulation policy and does not impose any additional costs on any regulated parties.

(d) Costs to the regulatory agency. As stated above in ''Costs to State Government'', the proposed amendment does not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment conforms the Commissioner's Regulations to the State Library's current circulation policy. The amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment conforms the Commissioner's Regulations to the State Library's current circulation policy. The proposed amendment will require authorized borrowers to apply to the State Library for borrowing privileges on a designated form. The amendment will not require any substantial additional paperwork requirements. Further, there are no substantial new reporting requirements or additional recordkeeping associated with the proposed amendment.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment and none were considered. The amendment merely conforms the Commissioner's Regulations to the State Library's current policy and practice relating to borrowing library materials. The amendment primarily clarifies certain terms and provisions, simplifies certain portions of such policy, and makes other technical amendments.

9. FEDERAL STANDARDS:

No federal standards apply to the subject matter of this rule making.

10. COMPLIANCE SCHEDULE:

The proposed amendment would be effective on its stated effective date. The amendment conforms the Commissioner's Regulations to the State Library's circulation policy currently in effect. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment relates solely to the State Library's policy on borrowing circulating library materials and does not impose any reporting, recordkeeping or other compliance requirements on small businesses or local government, nor will it impose any adverse economic impact on them. Because it is evident from the nature of the proposed amendment

that it will not affect small businesses or local government, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates solely to the State Library's policy on borrowing circulating library materials and will not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas of the State. Because it is evident from the nature of the proposed amendment that it will not affect rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates solely to the State Library's policy on borrowing circulating library materials and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

NOTICE OF ADOPTION

Enactment of a Serialized Official New York State Prescription Form

I.D. No. HLT-37-08-00004-A

Filing No. 1123

Filing Date: 2008-11-10

Effective Date: 2008-11-26

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

Action taken: Addition of Part 910, amendment of Part 80, sections 85.21 and 85.22, repeal of sections 85.23 and 85.25 of Title 10 NYCRR; amendment of section 505.3, repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 21 and 3308

Subject: Enactment of a Serialized Official New York State Prescription Form.

Purpose: Mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Text or summary was published in the September 10, 2008 issue of the Register, I.D. No. HLT-37-08-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Childhood Lead Poisoning Screening and Follow-Up

I.D. No. HLT-48-08-00023-P

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

Proposed action: Amendment of Subparts 67-1 and 67-3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 206

Subject: Childhood Lead Poisoning Screening and Follow-up.

Purpose: To expand follow-up for children with elevated blood levels; authorize point-of-care laboratory testing and require reporting.

Text of proposed rule: Subdivisions (c) through (h) of Section 67-1.1 are renumbered to be subdivisions (d) through (i).

A new Subdivision (c) of Section 67-1.1 is added to read as follows:

67-1.1(c) ''Child'' shall refer to an individual from birth to less than eighteen years, unless otherwise specified.

Paragraphs (5) through (10) of subdivision (a) of Section 67-1.2 are renumbered to be paragraphs (6) through (11).

Section 67-1.2(a) is amended to add a new paragraph (5), and newly renumbered paragraphs (6), (9), (10) and (11) are amended to read as follows:

67-1.2(a)(5) Results of blood lead analysis performed in a health care practitioner's office pursuant to Public Health Law Section 579(1) that is certified by the Centers for Medicare and Medicaid Services under regulations implementing the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) must be reported to the Commissioner of Health and to the local health officer in whose jurisdiction the subject of the test resides. Such results shall be reported within fourteen business days of the date of analysis and on such forms as prescribed by the Commissioner of Health. Such reports must include the subject's name, date of birth, race, gender, address, county of residence, type of sample (venous or fingerstick) and blood lead level; the health care practitioner ordering the test, facility identifiers, the date of sample collection, and the date of analysis.

67-1.2(a)[(5)]*(6)* Each primary health care provider who screens a child for elevated blood lead levels shall explain the blood lead test results and [give a certificate] *provide documentation* of lead screening to the parent or guardian of the child or other person authorized to consent for the medical care of the child.

67-1.2(a)[(8)]*(9)* Primary health care providers shall confirm blood lead levels *equal to or* greater than [15] *10* micrograms per deciliter of whole blood obtained on a [fingerstick] *capillary* specimen from a child using a venous blood sample.

67-1.2(a)[(9)]*(10)* For each child who has a confirmed blood lead level equal to or greater than [20]*15* micrograms per deciliter of whole blood, primary health care providers shall provide or make reasonable efforts to ensure the provision of a complete diagnostic evaluation; medical treatment, if necessary; and referral to the appropriate local or State health unit for environmental management. A complete diagnostic evaluation shall include at a minimum: a detailed lead exposure assessment, a nutritional assessment including iron status, and a developmental screening.

67-1.2(a)[(10)]*(11)* Primary health care providers shall communicate and coordinate as appropriate with local health units to ensure that each child with an elevated blood lead level receives appropriate follow-up, as prescribed above in paragraphs [(5)]*(6)* through [(9)]*(10)* of this Section.

Paragraphs (1) and (3) of subdivision (b) of Section 67-1.2 are amended to read as follows:

67-1.2(b)(1) A health care provider that provides services to a child who is at least 6 months of age but under 6 years of age and who is not the child's ongoing primary care provider, such as a hospital inpatient facility, an emergency service if the child's condition permits, or other facility or practitioner which provides services to the child on a one-time or walk-in basis, shall inquire if the child has been appropriately assessed and screened for elevated blood lead levels in accordance with the schedule prescribed in paragraphs (1) and (3) of [this] subdivision *67-1.2(a)*.

67-1.2(b)(3) If screening is performed, the blood lead test result shall be sent to the child's primary care provider or to the local health unit to enable appropriate follow-up in accordance with paragraphs (a)[(5)]*(6)* through [(9)]*(11)* of this section.

Subdivision (a) of Section 67-1.3 is amended to read as follows:

67-1.3(a) All blood lead tests shall be performed by *(i)* a *clinical* laboratory approved for toxicology-blood lead under Article 5, Title V of the Public Health Law[.]*; (ii) a health care practitioner's office pursuant to Public Health Law Section 579(1) that is certified by the Centers for Medicare and Medicaid Services under regulations implementing the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA); or (iii) an entity exempt from the requirements of Public Health Law Article 5, Title V pursuant to Section 579(3) of that Title, that holds a certificate of registration issued by the department and is authorized to conduct blood lead analyses.*

Subdivision (a) of Section 67-1.4 is amended to read as follows:

67-1.4(a) Prior to or within three months of initial enrollment, each child care provider, public and private nursery school and preschool, licensed, certified or approved by any State or local agency shall obtain [a copy of a certificate of] *a written statement signed by a health care provider that documents* lead screening for any child at least one year of age but under six years of age, and retain such documentation until one year after the child is no longer enrolled.

Subdivision (a) of 67-3.1 is amended to read as follows:

67-3.1(a) For purposes of this Subpart, laboratory shall mean*: (i)* any laboratory that holds a permit issued in accordance with Public Health Law Article 5, Title V and is authorized to conduct blood lead analyses

[.]*; or (ii) an entity exempt from the requirements of Public Health Law Article 5, Title V pursuant to Section 579(3) of that Title, that holds a certificate of registration issued by the department and is authorized to conduct blood lead analyses.*

Subdivision (d) of Section 67-3.1 is repealed, subdivisions (e) through (h) are renumbered to be subdivisions (d) through (g), and newly renumbered subdivisions (d), (e), and (f) are amended to read as follows:

67-3.1 [(e)]*(d)* [Laboratories that use an electronic system for tracking test results] *All laboratories* shall report electronically to the Commissioner of Health each blood lead analysis conducted [which]. *The report* must include the *subject's* name, date of birth, race, gender, address, county of residence, type of sample (venous or fingerstick)[,] *and* blood lead level[,]*;* the [physician] *health care practitioner* ordering *the* test, laboratory identifiers, *the* date the sample was collected and the date of analysis. Reporting pursuant to this subdivision shall be done using an electronic telecommunication system or floppy disks consistent with the technical specifications established by the Department.

67-3.1 [(f)]*(e)* Any [clinical] laboratory not permitted in accordance with Public Health Law Article 5, Title V to perform blood lead analysis which accepts a blood lead sample [from a health care provider for referral to a laboratory] *and refers the sample elsewhere* for analysis shall [insure that the requisition slip includes] *transmit to the laboratory performing the analysis* all of the information that is required by [subdivisions] *subdivision* (d) [and (e)] above. [and that this information is transmitted to the laboratory performing the analysis with the blood lead sample.]

67-3.1[(g)]*(f)*(2) In addition to any other reporting required by this Subpart, all [clinical] laboratories shall notify the provider ordering the blood lead test of the results of any analysis in a child [up to 72 months of age] *less than eighteen years of age* which is equal to or greater than 45 [mg/dl]*mcg/dL* (micrograms per deciliter) within 24 hours of the analysis.

Subdivision (b) of Section 67-3.2 is amended to read as follows:

67-3.2(b) All health care providers shall notify the health officer having jurisdiction of the occurrence of any blood lead level above 45 [mg/dl]*mcg/dL* (micrograms per deciliter) in a child [up to 72 months] *less than eighteen years of age* within 24 hours of having been notified of this result by the testing laboratory.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority:

Section 206 (1)(n) of Public Health Law (PHL) authorizes the Commissioner of Health to establish rules and regulations for the protection of the public health against lead poisoning. PHL Section 1370-a authorizes the Department of Health (DOH) to establish a lead poisoning prevention program, including a statewide registry of children with elevated blood lead levels (EBLLs) and regulations for screening and follow-up of children and pregnant women.

Legislative Objectives:

PHL sections 206(1)(n) and 1370-a charge the department with regulating screening, reporting, follow-up and prevention of lead poisoning. This proposal implements that charge by updating regulations to reflect current lead screening technology and practice standards, to update reporting requirements consistent with recent changes in PHL, and to clarify and expand requirements for follow-up of children with lead poisoning.

Needs and Benefits:

In 2006, the Federal Food and Drug Administration (FDA) approved a portable blood lead analyzer that allows for ''point-of-care'' collection and analysis of blood samples in physician offices and other community practice settings. Current regulations, which require that all blood lead tests be performed by a laboratory approved for toxicology-blood lead under Article 5, Title V of the PHL (i.e. permitted clinical laboratories), and which require reporting of blood lead test results conducted by permitted clinical laboratories to DOH, predate the availability of point-of-care lead test devices and therefore do not recognize blood lead testing or require reporting of results conducted by physician office laboratories (POLs), which are exempt from the New York State clinical laboratory permit requirements of PHL Article 5 Title V, or by registrant laboratories, which register with the Department in accordance with recently-amended PHL Section 579(3). Reporting of all blood lead test results is essential to assure timely follow-up for children with EBLLs and complete surveillance data to guide public health activities. Proposed amendments authorize POLs and registrant laboratories to conduct blood lead testing using devices of complexity appropriate for their level of federal certification, and require reporting of blood lead results performed by these entities to DOH.

Current regulations that require capillary blood lead sample results of greater than 15 mcg/dL to be confirmed using a venous blood sample are inconsistent with current Centers for Disease Control and Prevention (CDC) guidelines and state laboratory standards which require venous confirmation for capillary blood lead results greater than or equal to (>) 10 mcg/dL. Proposed changes update regulations to match these standards.

Current regulations require health care providers (HCPs) to provide a complete diagnostic evaluation, medical management if necessary and referral to the appropriate local or state health department for environmental management for children with blood lead levels (BLLs) > 20 mcg/dL. The dramatic decline in the number of children with BLLs > 20 mcg/dL since 1996 provides the opportunity to use existing resources to expand comprehensive follow-up services to more children by lowering the BLL requiring comprehensive follow-up from 20 to 15 mcg/dL.

While lead poisoning prevention primarily targets children under age six years, all children with EBLLs need follow-up services. Amendments clarify that unless otherwise specified, the term ''child'' refers to individuals less than 18 years of age, and expand current requirements for immediate reporting of critically elevated blood lead levels for children under age six years by permitted laboratories and HCPs to include all children less than age eighteen. Age-specific requirements for universal and risk-based screening remain unchanged.

Current regulations, which refer to a ''certificate of lead screening,'' have caused confusion because there is no specific certificate format that must be utilized. Proposed amendments clarify that a written statement signed by a HCP that documents a child's lead screening status satisfies these requirements.

Recent amendment to PHL Section 576-c requires that all permitted clinical laboratories report all reportable diseases or health conditions electronically, while amendments to PHL Section 579(3) require registrant laboratories to comply with reporting requirements to the same extent and in the same manner as clinical laboratories. Proposed changes require electronic reporting of blood lead results by all clinical laboratories and registrant laboratories, consistent with PHL. Amendments also clarify the existing requirement for transmission of required information when a laboratory refers a blood lead sample to a permitted laboratory for analysis.

Costs:

Costs to the Regulated Entity:

The proposed changes will expand the current requirement for LHDs to coordinate comprehensive services and provide environmental services for children with BLLs > 20 mcg/dL to include children with BLLs 15-19 mcg/dL. This change will assure that more children with lead poisoning receive the most effective interventions to benefit their physical, cognitive and behavioral development. This expansion will initially increase the number of children requiring comprehensive follow-up services from approximately 326 to 786 annually (2005 statewide data, excluding New York City). However, the cost of this increase is offset by the steady decrease in annual incidence that has occurred since current regulations were enacted. The number of children with BLLs > 20 mcg/dL has declined, from 1,113 children in 1996 to 326 children in 2005. Therefore, the total number of children who will require comprehensive follow-up under the proposed changes (786) is significantly less than the number of children requiring comprehensive follow-up under the current regulations in 1996 (1,113) . Preliminary analysis of 2007 data indicates further declines. During this same time period, LHDs have received approximately level grant funding, and in 2007 increased grant funding totaling $400,000 annually was allocated to the ten LHDs outside of New York City with the highest incidence of EBLLs to support expanded environmental lead prevention activities.

The impact of the proposed change is further mitigated by current LHD practices. Environmental management services for 21 partial service counties (counties in which environmental services are provided by state district offices (DOs) rather than the LHD) account for approximately 13% of the projected increase. The New York City Department of Health and Mental Hygiene already provides comprehensive follow-up for all children with EBLLs > 15 mcg/dL. At least 23 other LHDs already provide environmental services to some or all children with EBLLs of 15-19 mcg/dL.

Under the proposed changes, HCPs will be required to confirm capillary blood lead results > 10 mcg/dL in place of the current requirement of >15 mcg/dL. Surveillance data indicate that in practice HCPs are already confirming the vast majority (86%) of capillary blood lead test results 10-14 mcg/dL, consistent with CDC guidelines and state clinical laboratory standards. HCPs also will be required to provide additional follow-up services for children with BLLs 15 - 19 mcg/dL, including detailed lead exposure assessments, developmental screening, and nutritional assessments, equivalent to the services currently required for children with BLLs > 20 mcg/dL.

Under the proposed changes, POLs and registrant laboratories that choose to conduct lead tests will be required to report the results to DOH,

consistent with current reporting requirements for clinical laboratories. Registrant laboratories will be required to report in the same manner as clinical laboratories, in accordance with recently amended PHL Section 579(3). POLs may report via paper or electronically; additional systems changes to facilitate more streamlined electronic reporting are being pursued.

Proposed changes clarify that child care providers are required to obtain a written statement signed by a HCP that documents blood lead screening for children enrolling in child care, rather than a specific certificate of blood lead screening referenced in current regulations. The State Office of Children and Family Services has a standard medical form that includes documentation of lead screening, which can be used to meet this requirement.

Costs to State and Local Governments

Costs to the state include provision of environmental management services for approximately 63 additional children annually with BLLs 15-19 mcg/dL residing in 21 partial service counties in which environmental services are provided by DOs. This increase is offset by the steady decline over the past decade in the number of children with BLLs > 20 mcg/dL requiring environmental services, with further decline projected across all EBLL categories. Moreover, DOs serving six of the 21 partial service counties already conduct environmental management for children with BLL 15-19 mcg/dL. It is anticipated that this increased caseload can be absorbed by existing DO staff. Costs to local governments are detailed above as regulated entities.

Costs to the Department of Health

Costs to the Department are detailed above as costs to the state.

Local Government Mandates:

Current regulations require LHDs to institute measures to identify and track children with EBLLs to assure appropriate follow-up, and to provide environmental management services for children with BLLs > 20 mcg/dL in full-service counties. Proposed changes require expansion of comprehensive services to children with BLLs 15-19 mcg/dL, and clarify that follow-up services are required for all children up to age eighteen years with EBLLs.

Paperwork:

Proposed amendments require no additional forms or reporting systems. Existing forms, reporting systems and policy and procedure manuals may require modifications.

Duplication:

This regulation does not duplicate any existing state or local regulations.

Alternatives:

No viable alternatives to the proposed changes have been identified. Changes to authorize POLs and registrant laboratories to conduct blood lead testing using devices of complexity appropriate for their level of federal certification, and to require reporting of lead test results from these entities, are necessary to reflect new point-of-care technology. Confirming capillary blood lead test results > 10 mcg/dL is necessary to match current federal and state standards. Changes are necessary to clarify the requirement for provision of follow-up services, and prompt reporting of critically elevated BLL results, to assure that all children with lead poisoning regardless of age receive prompt and appropriate follow-up.

Proposed changes will expand environmental management and other comprehensive follow-up services to children with BLLs 15-19 mcg/dL, which exceeds federal standards. The alternative of maintaining the current requirement for these services at BLLs > 20 mcg/dL was rejected in light of the clear evidence of harmful effects of BLLs in this range on children's development and the steady decline in the number of children with EBLLs. Reducing the threshold to 10 mcg/dL was considered as an alternative, but was rejected at this time because it would result in a significant increase (approximately three-fold in New York City and approximately seven-fold outside of New York City, compared to current requirements) in caseload for LHDs and state DOs that is not feasible within existing resources. Lowering the threshold to 15 mcg/dL was selected as a viable approach that will expand comprehensive services to more children with lead poisoning within available resources. The Department will continue to assess the feasibility of further lowering this threshold to 10 mcg/dL in the future.

Federal Standards:

Changes to authorize the appropriate use of blood lead test devices in POLs and registrant laboratories and to require reporting of lead test results by these entities are consistent with approval of portable blood lead test devices by the FDA and CDC. The change to confirm capillary blood lead test results > 10 mcg/dL matches current CDC standards. Expanding comprehensive follow-up services to children with BLLs > 15 mcg/dL exceeds CDC's standard for provision of such services for BLLs > 20 mcg/dL and persistently elevated BLLs 15-19 mcg/dL, but is consistent with CDC's charge to states to eliminate childhood lead poisoning by 2010 through a combination of primary and secondary prevention measures. New York State has the highest number of children with lead poisoning and the highest number of high-risk older housing units nationally, necessitating an aggressive approach to lead elimination. Precedence for lowering the threshold for environmental interventions to 15 mcg/dL has been established in other high-incidence states and municipalities including Chicago, New York City, Baltimore, and Massachusetts.

Compliance Schedule:

The proposed amendments are to be effective 45 days after publication of a notice of adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect of the Rule:

The proposed amended rule authorizes physician office laboratories (POLs), which are exempt from the New York State clinical laboratory permit requirements of PHL Article 5 Title V, and registrant laboratories, which register with the Department in accordance with recently-amended PHL Section 579(3), to conduct blood lead testing using devices of complexity appropriate for their level of federal certification, and requires reporting of blood lead results performed by POLs and registrant laboratories to DOH. These amendments may impact POLs and registrant laboratories that choose to purchase portable point-of-care blood lead analysis devices, including those approved by the Federal Food and Drug Administration as Clinical Laboratory Improvement Amendment (CLIA)-waived devices. These portable analysis devices allow for immediate analysis of a blood lead sample before a patient leaves the provider's office, offering potential for increasing screening rates. The number of providers that are currently using these lead screening devices is very small. As of September 2008, there are approximately 118 providers known to have purchased devices for point-of-care blood lead analysis, including 92 POLs and 26 registrant laboratories. POLs and registrant laboratories will be positively affected by affirmatively authorizing them to conduct lead screening tests, using testing devices of complexity appropriate for their level of federal certification. POLs and registrant laboratories will also be required to report the results of lead tests to the Department, consistent with current reporting requirements for permitted laboratories and, for registrant laboratories, with recent amendments to Public Health Law (PHL) Section 579(3). Currently the Department's Childhood Lead Poisoning Prevention Program conducts outreach to providers known to have acquired these devices to request reporting of results. Of the 59 providers who have been contacted to date, 57 (97%) are already reporting the results to the department on a voluntary basis, thereby greatly mitigating the impact of the proposed requirement in practice. Outreach is in progress to the remaining 59 providers who more recently acquired the lead screening devices, and similar cooperation in reporting of results is anticipated from these providers. The Department's Wadsworth Laboratory will work with registrant laboratories to implement requirements for electronic reporting in accordance with recently amended PHL Sections 576-c and 579(3).

The proposed amendments to expand environmental and other comprehensive follow up services to children with blood lead levels (BLLs) 15-19 mcg/dL may impact local health departments (LHDs) by initially increasing their caseload. Based on the most recent (2005) data, all full-service LHDs (defined as LHDs that directly provide environmental health services) other than New York City will experience some increase in required caseload for environmental management and other associated follow-up services for children with elevated blood lead levels (EBLLs). LHDs in partial service counties, defined as the 21 counties that receive environmental services through State health department district offices (DOs), will experience caseload increases in non-environmental follow-up services only, with minimal impact.

The impact on individual LHD caseload varies by county, based on population size and the local incidence of childhood lead poisoning. Statewide, the proposed expansion will result in an initial increase in the number of children requiring comprehensive follow-up services from approximately 326 to 786 annually based on 2005 data. These figures exclude New York City, which already provides comprehensive services for all children with BLLs > 15 mcg/dL pursuant to local health code. The projected increase in annual caseload by county ranges from zero to approximately 72 cases, with the vast majority of the increase concentrated among eight full-service LHDs that have an average of 20 or more incident cases of children under age six years with BLLs 15-19 mcg/dL annually. However, the cost of this initial increase in caseload is offset by the steady decline in annual incidence that has occurred since the original enactment of Part 67. Between 1996 and 2005, the number and rate of children with EBLLs > 20 mcg/dL has steadily declined, from 1,113 children (5.4% of children tested) in 1996 to 326 children (1.7% of children tested) in 2005 (data are statewide, excluding New York City). Therefore, the total number of children who will require comprehensive follow-up services under the proposed changes (approximately 786 children annually) is significantly less than the number of children requiring those services under the current regulations in 1996 (1,113 children). This steady decline has occurred across all counties. Moreover, preliminary analysis of 2007 data indicates further significant declines in both the number and rate of

EBLLs among children. During this same time period as caseloads have significantly declined, LHDs have received approximately level grant funding to support lead poisoning prevention work. In addition, starting in 2007, increased grant funding totaling $400,000 annually was allocated to the ten LHDs outside of New York City with the highest incidence of EBLLs to support expanded environmental lead prevention activities. This group includes all of the eight LHDs noted above that will experience the most significant projected increase in caseload under the proposed regulation change.

As noted above, the New York City Department of Health and Mental Hygiene already provides environmental management for all children with EBLLs > 15 mcg/dL, so the proposed change will not impact their workload. In addition, at least 23 other full-service LHDs already provide environmental follow-up services to some or all children with EBLLs of 15-19 mcg/dL, thereby further mitigating the impact of the proposed regulatory changes. Finally, the 21 partial-service LHDs will experience an increase only in non-environmental follow-up responsibilities, as environmental management services for children in these counties are provided by the state district offices rather than LHDs.

Current regulations require child care providers to obtain a certificate of blood lead screening for each child at least one year of age but under six years of age. The use of specific certificates by health care providers (HCPs) is not mandated by law, and the Department has not used certificates in practice since 1996. The proposed amendments clarify that a written statement signed by a HCP that documents blood lead screening satisfies this requirement. The State Office of Children and Family Services makes available to child care providers a standard medical form that includes documentation of blood lead screening, which can be used to meet this requirement.

Current regulations require permitted laboratories to report to the HCP ordering the test any blood lead test results > 45 mcg/dL within 24 hours for children up to 72 months of age, and require HCPs to report blood lead test results > 45 mcg/dL for children up to 72 months of age to the LHD within 24 hours of receiving the report. The proposed amendments require that blood lead test reports for any child less than age 18 years with a result > 45 mcg/dL be reported by permitted laboratories and health care providers, respectively. The impact of this change is minimal, as the total number of children between 6 and 18 years of age with BLLs greater than or equal to 45 mcg/dL is small; in 2005, only 12 children age six to eighteen years were identified with BLLs > 45 mcg/dL in New York State, including New York City.

Compliance Requirements:

The proposed changes will not extend regulatory oversight to any parties not presently regulated. Under the proposed amendments, POLs and registrant laboratories that choose to conduct lead screening tests will be required to report the results to the Department of Health. As noted, in practice the majority of providers conducting such testing are already reporting to the Department on a voluntary basis. POLs can report via paper records or electronically to offer flexibility to the provider; additional systems changes to facilitate even more streamlined electronic reporting are being pursued. Registrant laboratories will be required to report to the department electronically in the same manner as clinical laboratories, in accordance with recently amended PHL Section 579(3). Permitted laboratories and HCPs will be required to report blood lead test results for any child up to age 18 years with a result > 45 mcg/dL within 24 hours, consistent with current requirements for reporting of such results for children up to age six years.

LHDs may need to make changes to their existing protocols or forms to expand actions currently provided for children with BLLs > 20 mcg/dL to children with BLLs 15-19 mcg/dL, and to update their standard policy and procedure manuals.

Professional Services:

It is not expected that regulated parties will require additional professional services to comply with these regulations. LHDs already have the professional staffing and expertise needed to comply with the requirements. As noted, the initial increase in environmental management caseload for LHDs is offset by the significant decline in the number of children requiring environmental management over the past ten years, in the context of approximately level grant funding. In addition, the ten counties with the highest projected increase in caseload received increased annual grant funding beginning in 2007 to support additional environmental prevention activities. LHDs may request to use grant funds to hire additional staff, or services may be provided by existing staff.

Compliance Costs:

POLs and registrant laboratories that choose to conduct blood lead testing using testing devices of complexity appropriate for their level of federal certification may need to develop or modify standard policy and procedure manuals and will be required to submit reports of test results to the Department, thus incurring minimal costs. Reporting by POLs may be done via paper reports or electronically; additional systems changes to facilitate even more streamlined electronic reporting are being pursued. Registrant laboratories will be required to report to the department electronically in the same manner as clinical laboratories, in accordance with recently amended PHL Section 579(3). LHDs may need to modify policy and procedure manuals and accompanying protocols for management of children with BLLs 15-19 mcg/dL.

Economic and Technological Feasibility:

The proposed changes present no significant economic or technical difficulties for laboratories, HCPs, or child care providers. The increase in caseload for LHDs presents no significant technical difficulties, as LHDs have necessary experience and expertise to provide these services, and are economically feasible within current funding levels in light of the significant and continued decline in the number of children requiring comprehensive follow-up services under current regulations.

Minimizing Adverse Impact:

The proposed amendments were developed with the goal of minimizing burdens on regulated parties including the approaches suggested in SAPA Section 202-b(1). Performance rather than design standards have been applied to have appropriate flexibility for meeting requirements for reporting and provision of follow-up services. The revised BLL threshold for required environmental follow-up services was established with specific consideration for economic and technical feasibility within the context of existing resources and current practices, in favor of other proposals considered that would require significant additional resources to implement. Exemption from proposed requirements is not feasible as it would create unfair disparities in provision of services for at-risk children.

Small Business and Local Government Participation:

The proposed changes have been discussed with and comments solicited from affected parties, including the New York State Association of County Health Officials (NYSACHO) and the New York State Advisory Council on Lead Poisoning Prevention, which includes representatives from other state agencies and diverse public groups with a vested interest in lead poisoning prevention including local government, medical organizations, parents, community groups, industry and others. Recommended changes have been incorporated, as appropriate, based on comments received as a result of these discussions.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The amended regulation will have a statewide impact, affecting all 44 rural areas in New York State. However, the number of children with elevated blood lead levels (EBLLs) who will require additional follow-up services, including environmental management services, is significantly lower in rural vs. urban counties. Moreover, the expansion of environmental management services will not directly impact local health departments (LHDs) in 21 partial-service rural counties, defined as those counties that receive environmental services through state department of health District Offices (DOs).

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

The proposed changes will not extend regulatory oversight to any parties not presently regulated, and will not impose significant adverse impact on providers or LHDs in rural areas. The proposed amended rule authorizes physician office laboratories (POLs), which are exempt from the New York State clinical laboratory permit requirements of PHL Article 5 Title V, and registrant laboratories, which register with the Department in accordance with recently-amended Public Health Law (PHL) Section 579(3), to conduct blood lead testing using devices of complexity appropriate for their level of federal certification. These changes may impact POLs and registrant laboratories that choose to purchase portable point-of-care blood lead analysis devices, including those approved by the Federal Food and Drug Administration as Clinical Laboratory Improvement Amendment (CLIA)-waived devices. These portable analysis devices allow for immediate analysis of a blood lead sample before a patient leaves the provider's office, offering significant potential for increasing screening rates. The proposed changes also require POLs and registrant laboratories that choose to conduct blood lead testing to report blood lead test results to the Department. POLs currently may report via paper or electronic methods; additional systems changes to facilitate even more streamlined electronic reporting are being pursued. Registrant laboratories will be required to report to the department electronically in the same manner as clinical laboratories, in accordance with recently amended PHL Section 579(3). LHDs in rural counties will be required to expand their coordination of comprehensive follow-up services currently provided to children with blood lead levels (BLLs) > 20 mcg/dL to children with BLLs 15-19 mcg/dL. However, the number of children with BLLs 15-19 mcg/dL in rural counties is significantly lower than in larger urban counties, and environmental management services in 21 partial-service rural counties are provided by state District Offices rather than by the local health departments themselves. It is not anticipated that rural areas will require additional professional services to comply with the proposed changes.

Costs:

Costs associated with modifying policy and procedure manuals and accompanying protocols may be incurred by LHDs, and by POLs and registrant laboratories that choose to conduct blood lead testing. The expansion of comprehensive follow-up services to children with BLLs 15-19 mcg/dL is not expected to create significant costs for LHDs in rural counties. Environmental health services in 21 partial-service rural counties are provided through state district offices, and thus would not incur additional costs for those LHDs. Minimal costs may be associated with provision of expanded educational follow-up services by rural LHDs for children with BLLs in this range, but this increase in caseload for rural counties will be small. In 2005, rural counties identified between 0 and 15 children under age six years annually with EBLLs between 15 and 19 mcg/dL; the majority of rural counties identified fewer than 10 children with BLLs in this range, and 28 rural counties identified three or fewer cases. These numbers are projected to continue to decline over time consistent with statewide and national trends in childhood lead poisoning.

Minimizing Adverse Impact:

The proposed changes would have no significant adverse impact on regulated parties in rural areas. These amendments were developed with the intent to minimize any burden on regulated parties. The revised BLL threshold for required environmental and other comprehensive follow-up services was established with specific consideration for economic and technical feasibility within the context of existing resources and current practices, in favor of other proposals considered that would require significant additional resources to implement.

Rural Area Participation:

The proposed changes have been discussed with and comments solicited from affected parties, including the New York State Association of County Health Officials (NYSACHO) and the New York State Advisory Council on Lead Poisoning Prevention, which includes representatives from other state agencies and diverse public groups with a vested interest in lead poisoning prevention including local government, medical organizations, parents, community groups, industry, and others. Both of these groups include representation from rural areas. Recommended changes have been incorporated, as appropriate, based on comments received as a result of these discussions.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities.

Department of Labor

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Public Employee Workplace Violence Prevention Programs

I.D. No. LAB-48-08-00003-P

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

Proposed Action: Addition of Section 800.6 to Title 12 NYCRR.

Statutory authority: Labor Law, section 27-b(6)(f)

Subject: Public Employee Workplace Violence Prevention Programs.

Purpose: To ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement programs to prevent and minimize the hazard of workplace violence to public employees.

Public hearing(s) will be held at: 10:00 a.m., Jan. 20, 2009 at Department of Labor, Bldg. 12, State Office Campus, Training Rms. D and E, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: www.labor.state.ny.us): By L. 2006, C. 82, the New York State Legislature created Labor Law § 27-b, with the intent ''to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees.'' Labor Law § 27-b(6)(f) states that the Commissioner of Labor ''shall adopt rules and regulations implementing the provisions of this section.''

The proposed rule creates a new section of regulations designated as 12 NYCRR Part 800.6 entitled ''Public Employer Workplace Violence Prevention Programs.''

Subpart 800.6(a), entitled ''Title and Citation'' sets forth the title of this part and gives a method of citing to it.

Subpart 800.6(b), entitled ''Purpose and Intent'' sets forth the purpose of this part, gives a method of citing to it.

Subpart 800.6(c), entitled ''Application'' states that this Part applies throughout the State to the State, any political subdivision thereof, public authorities, public benefit corporations, or any other governmental agency or instrumentality thereof. This part does not, however, apply to employers defined in Education Law § 2801-a.

Subpart 800.6(d), entitled ''Terms,'' defines the terms used in this part.

Subpart 800.6(e), entitled ''Management Commitment and Employee Involvement,'' requires employers to develop and implement written policy statements regarding the goals and objectives of their Workplace Violence Prevention Programs, and provide for full employee and employee representative participation, which statement must be posted where notice to employees are normally posted and which must briefly indicate the employer's workplace violence prevention policy and alert and notification policies for employees to follow in the event of a workplace violence incident. The employer has the responsibility to prepare and implement these policies.

Subpart 800.6(f), entitled ''Risk Evaluation and Determination'' requires employers to examine their records to identify patterns in the type and cause of injuries in particular work areas or incidents involving specific operations or individuals. The employer, with the participation of the Authorized Employee Representative, shall evaluate the workplace for potential risks of workplace violence. The subpart lists factors that might place employees at risk.

Subpart 800-6(g), entitled ''The Workplace Violence Prevention Program,'' states that employers with twenty or more full time permanent employees, with the participation of the Authorized Employee Representative, must develop a written Workplace Violence Prevention Program. Such Program must identify the risk factors identified in the workplace examination and set forth the methods the employer will use to prevent workplace violence incidents. . The Program must also set forth various controls, address each specific identified hazard, set forth a reporting system and provide an outline or lesson plan for employee training. Such Program must be updated as necessary, but at least annually. The subpart also provides noting in this part shall require the disclosure of information otherwise kept confidential for security reasons. The subpart lists types of information that need not be disclosed.

Subpart 800.6(h), entitled ''Employee Information and Training,'' states that upon completion of the Workplace Violence Protection Program, the employer must provide each employee with information and training on the risk of workplace violence at the time of hiring and at least annually thereafter. The subpart sets forth the minimum issues to be addressed in such training. The subpart also states that every employer required to make a written Workplace Violence Prevention Program must make such written program available to employees, Authorized Employee Representatives and the Commissioner of Labor.

Subpart 800.6(i), entitled ''Recordkeeping and Recording of Workplace Violence Incidents,'' requires employers to develop and implement protocols for reporting of workplace violence incidents (but provides that existing reporting systems developed or implemented to meet other federal, state or local requirements may be acceptable under certain conditions), including procedures for reporting possible criminal activity to appropriate police agencies, and for attempting to develop protocols with local District Attorneys or Police for prompt investigation and appropriate prosecution of such incidents. This subpart also requires employers to develop and maintain workplace violence incident reports. Such reports may be in any format but must contain a certain amount of minimum information set forth in the subpart. The format of the report of the report must provide a means by which it may be made confidential. The subpart sets forth the circumstances under which identifying information shall not be disclosed. The subpart also requires such reports to be maintained and used for annual program reviews and updates to identify trends in types of workplace incidents and to review the effectiveness of the mitigating actions taken.

Subpart 800.6(j), entitled ''Employee Reporting of Workplace Violence Prevention Concerns or Incidents,'' requires employees and their authorized representatives to report, in writing, serious violations of the employer's workplace violence protection program or that an imminent

danger of workplace violence exists, with certain exceptions to such requirement. If, after making such report and providing the employer a reasonable opportunity to correct the problem, the matter has not been resolved, the employee may request, in writing, an inspection by the Commissioner of Labor, who shall make such inspection forthwith. The Commissioner of Labor shall provide a copy of the written notice to the employer no later than the time of inspection, and the identity of the reporting employee may be withheld at his/her request. The Commissioner of Labor's inspection shall not be limited to the alleged violation, but may include any other area of the premises where there is reason to believe a serious violation may exist. The Commissioner of Labor may also conduct an inspection, on his or her own initiative, of any premises occupied by an employer if he/she has reason to believe that a violation of this section has occurred. No employer may retaliate against an employee for exercising any right granted by these regulations.

Subpart 800.6(k), entitled ''Effective Dates,'' requires the Employer's Policy Statement to be complete thirty days after the effective date of these regulations, the workplace risk evaluation and determination to be completed sixty days after such effective date, the Workplace Violence Prevention Program to be completed seventy-five days after such effective date, and to be in full compliance with this entire part within one hundred twenty days of such effective date.

Text of proposed rule and any required statements and analyses may be obtained from: David Ruppert, New York State Department of Labor, Room 522, State Office Campus, Building 12, Albany, NY 12240, (518) 457-3518, email: USADIR@labor.state.ny.us

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

Statutory Authority: Article 2, Section 27-b of the Labor Law, as added by Chapter 82 of the Laws of 2006, requires public employers to develop and implement programs to prevent workplace violence. The law also requires the Commissioner of Labor (the Commissioner) to promulgate rules and regulations to implement the law within 120 days of its effective date, i.e. March 4, 2007.

The Commissioner has also been given broad authority to promulgate safety and health rules and regulations under Labor Law Article 2, Section 21(11); Article 2, Section 27; Article 2, Section 27-a; and Article 7, Section 200(1). Under Article 2, Section 27-a, the Commissioner shall promulgate rules when there is a recommendation of action by the Occupational Safety and Health Hazard Abatement Board (the ''Board''). The Board made such recommendation regarding workplace violence in November, 2007.

Both Section 27-a and Section 27-b of the Labor Law are applicable to public sector employers and the Legislature provides for nearly identical enforcement procedures. Labor Law Sections 21 and 25 grant the Commissioner the right of entry into any workplace covered by the Labor Law. Further, Labor Law Section 26 provides the Commissioner with the right to review and copy all papers, books, records, or other documents required by the Labor Law or regulation.

In September, 2007, the Department of Labor (the Department) proposed regulations to implement the provisions of Section 27-a of the Labor Law. During the course of this rulemaking, the Department received public comment and held public hearings on the rules. Upon the expiration of this proposed rule, the Department submitted the instant rule which incorporates a number of changes recommended during the comment period of the prior rulemaking.

Legislative Objectives: Workplace violence is now one of the leading causes of death on the job in the United States. The Legislative findings at L. 2006, c. 82 state that workplace assaults and homicides are a serious public health problem that demands the attention of the State of New York. During the last decade, homicide was the third leading cause of death for all workers and the leading cause of occupational death for women workers. Section 27-b of the Labor Law requires public employers to implement programs to minimize the hazard of workplace violence. The proposed rule will clarify the methods employers must utilize to meet the intent of the law.

Justification for the statute provided in the Bill Memo stated:

''Workplace violence is an increasingly visible element in today's workplaces. This Bill would assist both employers and employees in ensuring a safe work environment. ''Labor Law Section 27-b(1) clearly reflects the Legislature's intention that employees participate in the development of workplace violence programs, as this provision provides: ''The purpose of this section is to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees.''

The Department recognizes the employees' right to participate in the process, but believes that the Legislature clearly expects the employer to design and implement the program.

After reviewing comments from both employer and employee representatives, the Department believes that the Legislature's intent of using workplace violence prevention programs to reduce the threat of injury or death from workplace violence has been carried out.

Needs and Benefits: According to the Bureau of Labor Statistics (BLS) 2,637 non fatal workplace assaults on hospital workers occurred in 1999- a rate of 8.3 assaults per 10, 000 workers. *See* Occupational Hazards in Hospitals, DHHS (NIOSH) Pub No. 2002-101. This rate is much higher than the rate for non-fatal assaults for all private sector industries, which is 2 per 10,000 workers.

The implementation of workplace violence prevention programs will decrease the number of violent incidents in the workplace with a corresponding reduction of lost time and productivity as well as a reduction in training and other expenses associated with replacing injured employees during recovery periods. Finally, workplace violence prevention programs should reduce expenses associated with the payment of workers compensation benefits related to workplace violence incident injuries and illnesses.

A number of studies have examined the best means of reducing workplace violence. See, e.g., National Institute of Occupational Safety and Health, ''Violence In The Workplace, Risk Factors and Prevention Strategies'' DHHS (NIOSH) Publication Number 96-100; The Department of Justice, Federal Bureau of Investigation, National Center for the Analysis of Violent Crime, ''Workplace Violence, Issues in Response.'' The Recommendations from these studies for optimizing plans to limit workplace violence, such as the fostering of employee involvement, the use of engineering controls over training, the preparation of a policy statement, incident tracking and review, the adoption of policies and procedures to mitigate hazards, employee training and periodic review and adjustment to the plan, have been incorporated into the proposed rule and regulation.

As noted above, Workplace Violence Prevention Program regulations were originally published in the State Register on September 19, 2007. Upon the expiration of this proposed rule, the Department submitted the instant rule which incorporates a number of changes recommended during the comment period of the prior rulemaking.

The following is a summary of the concerns received by the Department, and the revisions made to the original rule by the Department after extensive public comment on the original proposal:

1. New York City and a coalition of employers including Nassau County, The Conference of Mayors, and the Association of Counties, objected to the amount of information employers must provide to employees in the written plan. They expressed concern that the regulation would require the release of sensitive security procedures, such as terrorism protection plans, escape prevention plans for correctional institutions and operating procedures for undercover officers, which could be legitimate parts of a workplace violence prevention program. After reviewing the comments, the Department agrees with the objection to requiring disclosure of security-related measures. As a result, the new proposed rule reflects the following change:

- The Department added designated exceptions - consistent with protective language found in the state's Freedom of Information Law - to the release of information.

2. The Department also revised the proposal in response to concerns regarding personal privacy of employees in the reporting of incidents and what information is made available for review. The new proposed rule reflects the following changes:

- To address concerns involving the release of confidential medical information, ''Privacy Concern Case'' procedures were added. Stan-

dards for defining ''Privacy Concern Cases'' were taken from These requirements were taken from 12NYCRR Part 801, which contains the reporting requirements under the Public Employee Safety and Health (PESH) Act (Labor Law § 27-a).

- The revised rule requires the employer to treat incidents involving various specified types of injuries as privacy concern cases and also provides for the employee victimized by an incident of workplace violence with the ability to request privacy.

- Designation as a ''privacy concern case'' does not absolve the employer of the responsibility for reporting the Workplace Violence Incident. It will require the employer to withhold the name of the employee victim in the Workplace Violence Incident Report shared with others. The Commissioner may have access to this information as part of her incident review.

- The Department believes that this change allows for privacy of the employee while still allowing for collection of the data needed for an effective plan.

3. Other changes which clarified the employer's responsibility under the rule were also made, including the following:

- removing the requirement for crisis counseling after workplace violence incidents,

- clarifying that the responsibility for developing and implementing plans remains with the employer,

- clarifying the minimum requirements for employee involvement.

4. A number of employers have plans and policies in place in order to comply with other regulatory requirements. These employers questioned if they need to duplicate already existing polices and procedures. The new proposed rule reflects the following change:

- The revised rule states specifically that reporting systems prepared to meet other legal requirements, and that meet the intent of Section 27-b, may be used to comply with these regulations.

5. A number of comments were received regarding employee reporting of workplace violence prevention concerns or incidents. These comments conflicted with the statutory requirements found in the Labor Law and could not be acted on.

6. Comments were received regarding the issue of employee representative access to the workplace. The Department recognizes that Authorized Employee Representatives have access to the workplace and to the employees they represent. The proposed rule does nothing to extend access beyond that already afforded these representatives.

7. A number of comments were received regarding the requirement that employers maintain and review relevant records of previous workplace violence incidents. After review and consideration of those comments it has been determined that:

- The revised regulations make clear that they do not require that the employer review records of all injuries, only those that are relevant.

- The Department has concluded that such a record review is essential to the creation of a workplace violence program that addresses the dangers actually present in a particular workplace. Further, Labor Law § 27-a(9) requires an employer to establish and implement a reporting system for incidents of aggressive behavior which should remedy this problem after the first year.

8. A number of comments were received that asked that the regulations require risk control measures and crisis counseling. After consideration the Department is unable to incorporate those elements, as they are beyond the intent of the law.

9. A significant number of comments were received regarding the need for employee involvement in the development of Workplace Violence Prevention Plans and the definition of ''Authorized Employee Representative.'' The definition contained in the original rule is consistent with the definition of the term utilized in connection with other public employee safety and health activities and has not been changed With regard to comments received regarding the need for employee involvement in general, such involvement is a cornerstone of effective public employee safety and health initiatives. Authorized employee representative involvement assures employees that their concerns, insights, and perspectives are addressed in any workplace violence prevention plan. At the same time, involvement by an authorized employee representative assists employers by ensuring employee participation through a centralized and authoritative source who can effectively and credibly communicate with employees. Overall, involvement of employees through their authorized representatives ultimately inures to the benefit of both employers and employees by ensuring effective implementation of plans, policies, and procedures designed to prevent workplace violence.

10. Comments were received suggesting changes to the definition of ''Imminent Danger''. The Department has adopted the definition in the proposed rules for the following reasons:

- The definition adopted is the definition taken from the PESH Field Operations Manual.

- It is the same definition as found in the Federal OSHA Field Operations Manual.

- Requirements found in 29 CFR 1950(b) require that the Department have a program which is as effective as the Federal program.

- OSHA has certified that the Department's program for public employees is as effective as the Federal program.

- The Department's ''as effective as'' administrative rules are published at 12 NYCRR Parts 801 through 805 as well as the PESH Field Operations Manual.

11. Comments were received regarding the definition of ''Retaliatory Action,'' expressing concern that the definition was too broad and would prevent an employer from taking disciplinary action, or separating employees after a physical confrontation while an investigation was being conducted. However, the definition found in the regulation is the same as the definition found at Labor Law § 27-b(2)(e) and, accordingly, will not be changed.

12. Many definitions were revised or removed to allow for a better understanding of each section of the rule, as follows:

- The definition of ''Participation of the Authorized Employee Representative'' was deleted. The actual rights of participation are provided for in each section where employees are to have input. The previous rule was read as allowing employee representatives to review records compiled for the purpose of disciplinary actions. Any such implication has been removed in this rule.

- The definition of ''workplace violence incident'' was removed and incorporated into the definition of ''Workplace Violence''.

- The definition of ''Employee Involvement'' was deleted and those areas where employees must be involved were identified in the specific section of the rule.

- The definition of ''Workplace Violence'' was revised for clarification and to remove ''Verbal Abuse'', ''Offensive Touching'', and ''Harassment'' and to include ''Acts of Aggressive Behavior'' as well as to clarify that ''Stalking'' includes the intent of causing fear of material harm to physical safety and health.

- The definition of ''Serious Physical Harm'' was revised to include sexual assaults as defined in the Penal Law.

Costs: Costs associated with compliance with the proposed rule are restricted to State and local government; there is no cost to private industry. Currently all state facilities and, in particular, those in the corrections and mental health field, have comprehensive programs of one form or another which deal with the protection of employees from assault. The modification of these policies to comply with the proposed rule can be accomplished at a minimal cost and those of many larger state facilities may need no changes at all.

The cost to counties may also be minimal in that most have implemented safety policies in their higher risk facilities such as nursing facilities, jails, social service offices, and legislative facilities. The Department is not aware of any studies that were done or provided to the Legislature on costs to local government prior to passing the law.

Local governments may incur costs in developing a compliant plan for many areas of local government, where the risks and incidents of workplace violence are relatively rare, the burden imposed by these regulations would be extremely limited. This is particularly true in small communities that do not provide high risk services such as corrections and mental health.

Any compliance costs may also be mitigated by the lowering of

injury rates in many of the higher risk facilities covered, which would translate into less worker compensation benefits and leave, less overtime to cover shifts of injured employees, and fewer disability benefits distributed.

The costs incurred by the Department in responding to complaints and injuries or homicides will be reduced as employers develop compliant plans.

Government agencies may elect to share resources in the development of the plan and employee training where risks and abatement methods are the same. This could also help to reduce costs substantially.

Finally, the change reflected in the proposed rule allowing the use of previously-developed programs to meet the requirement for a Workplace Violence Prevention Program could result in significant savings. If the current plan complies with the requirements of this rule and if training was previously conducted and the employees are given an opportunity to comment there should be no need for retraining. Therefore, the flexibility reflected in the proposed rule allowing the use of existing programs would provide for savings.

Local Government Mandate: Section 27-b applies to local governments, and imposes obligations on them.

The act does not apply to public schools as defined in Section 2801a of the Education Law. Numerous comments were received on the previous rulemaking regarding the exemption of public schools. While those comments have been reviewed and considered, the Department has determined that the Rule must be consistent with the legislation which specifically exempts those workplaces.

Local governments who operate higher risk facilities such as social services offices, jails, and police departments will eventually see savings through reduced injuries and compensation costs if an effective program is developed and implemented.

The Legislation provides relief to small government entities, as no written program is required if the employer employs less than 20 employees. The rule is also written so that the smaller the employer and the lower the risk, the less an employer has to do to conform to the rule.

Local governments and all other public employers may reduce costs of compliance by electing to share resources in the development and implementation of their workplace violence prevention program.

Paperwork: The proposed rule will require all employers to develop and post a short Workplace Violence Policy Statement. The statement is designed for the employer to state the workplace violence policy that is expected to be followed in the workplace, the degree and method of employee involvement in the process, the means for employees to report concerns, and the individuals responsible to assure implementation. It was designed to establish management commitment and assign duties, which is the recognized first step in any successful safety and health program.

The proposed rule would also require that employers develop a written prevention program. In response to comments received as a result of the previous rulemaking, it is the Department's intent that the Employer would create a short document that:

- Briefly states goals and objectives,

- Is concise enough to post on a bulletin board,

- Identifies who employees should contact or alert in the event of an incident,

- Specify how the employer plans to include the employees, or employee representative, as the case may be, in the process of developing the program.

The program must also include a method for tracking workplace violence incidents. The information required is specified but the employer may provide it in any format chosen or utilize current forms or electronic data. Collection of data on the types, frequency and severity of workplace violence incidents is necessary to understand the nature of the workplace violence problem in the particular workplace, so that adequate measures can be taken to mitigate the hazards and the written program updated to reflect those changes. The written program must be a living document, updated when necessary to remain effective. The Workplace violence incident report is a tool to assist in that endeavor.

- The rule requires that employees must report violations in writing to a supervisor first and then to the Commissioner after a reasonable period has passed without remediation. The Legislature placed responsibility for receiving such reports on the supervisor, and all public employee complaints to the Commissioner are required to be in writing. The burden imposed on employers by this provision is minimal.

Additionally, Section 27-b requires training of employees; accordingly employers are required under the proposed rule to develop training outlines or lesson plans. Given that this requirement is set forth in the supporting statute, the Department does not have the flexibility to waive this requirement. Moreover, experience with other similar programs has demonstrated that employee training is a critical component of an effective safety and health related program.

Duplication: The proposed rule does not duplicate other requirements. The proposed rule attempts to avoid duplication by allowing regulated parties to utilize programs developed for other purposes to serve as the basis for a Workplace Violence Prevention Program, so long as the program addresses all the requirements set forth in this rule.

Alternatives: The Department has incorporated procedures which are nationally recognized as effective in preventing or reducing the incidence of workplace violence.

In response to comments received, the Department considered eliminating or limiting the reporting requirements of the original rule. While some modification was made to ensure that information of value to a review of the plan is reported, the Department determined that there are no acceptable alternatives to inclusion of the incident reporting system the employer is required to develop and implement under the proposed rule, which will identify the types of violence incidents occurring in the workplace, trends that are developing and timely information required to intervene when possible before an injury or fatality occurs. Absent such information, agencies cannot develop a program that will meet the legislations goals of ensuring that the ''risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees.''

Indeed, the Law specifically requires employers to develop reporting systems for ''aggressive behavior.'' The Department clearly interprets that the legislature would not have added this requirement if it did not view such reporting to be of some value in preventing assaults and homicides in the workplace.

The rule does not require information maintained through such incident reporting systems to be reported to the Department, unless it meets reporting requirements under other rules. The original draft rule had such an external reporting requirement, to which a number of employers objected. The department modified the draft to eliminate those external reporting requirements.

The requirement that an employee file a notice with the employer and allow a reasonable amount of time for the employer to correct the hazard before the employee may file a complaint with the Commissioner was also examined. Employee representatives were strongly opposed to this requirement. However, the provision was provided for in the legislation and could not be removed from the rule.

As a result of the previously published rulemaking, comments were received in which many employee representatives stated that the requirement that only serious violations could be referred to the Commissioner was unreasonably restrictive. The new draft rule continues to reflect that requirement, because the Department is unable to change that requirement which was imposed by the Legislature. In order to insure that there will be no major questions as to the distinction between serious or non-serious, the term ''Serious Violation'' has been defined.

In response to objections from public employers, alternatives to the participation of the employees or their representatives were considered, with the understanding, that employees have a large stake in the success of a program, and the statute reflects the legislative intent that

they participate. A change was made to clarify that the employer is ultimately responsible for the implementation of the rule and employees do not have veto power over the workplace violence plan. The definition of the term, ''participation of the employee representative'' was also removed in favor of delineating the rights of employees to participate in each section of the rule that involved an activity on which the Department felt employee participation was necessary to fulfill the statutory purpose.

In response to comments, alternatives to the frequency of the plan review were considered. The Department decided that an annual review would be adequate, provided that significant events were examined when they occur.

Comments were received suggesting that the annual training requirement be altered. The enabling legislation requires annual training and the requirement could not be changed.

- Many alternatives to compliance dates were considered. One employer commented that the Law took effect March 4, 2007, and no additional period for to allow employers to come into compliance is necessary. The Department believed that employers should be aware of the details of a final rule before investing time and resources in implementing compliance activities. Balancing that entitlement with the Department's obligation to assure the safety of employees, the Department believes that a reasonable schedule has been provided for. During these time frames most employers could reasonably come into compliance.

- Other alternatives proposed by comments that were examined and rejected were a change in the definition of ''Workplace'' which reflected the definition in the Law verbatim.

- As set forth supra, a more comprehensive definition of Workplace Violence was formed by including the ''Typology'' of workplace violence and more specific verbal issues.

Federal Standards: There are no mandatory federal standards which cover workplace violence. There are a number of national consensus documents prepared by the NIOSH, OSHA, FBI and others which were used to develop the rule into an effective tool in preventing workplace violence.

Compliance Schedule: Compliance should take no more than the 120 day time frame that has been built into the Rule. A stepped abatement period is provided for which will allow employers to be in compliance in that time frame.

The Policy statement should be developed within 30 days, the workplace examination should be completed within 60 days, the written program should be completed within 75 days, and the employer should reasonably be able to meet all requirements within 120 days.

Different, shorter and longer compliance periods were examined and rejected. The present recommended compliance periods represents a medium between those who advocated shorter or longer dates.

Regulatory Flexibility Analysis

1. Effect of rule:

The Law as enacted does not apply to private sector businesses. The Law applies to State and local government employers except School Districts, BOCES, other cooperative vocational schools. Schools in the City of New York are also exempted. The Department believes that compliance with the proposed rule will bring about safer workplaces and reduce the number of assaults and other workplace violence incidents involving employees. Reducing incidents of workplace violence will, in turn, translate into a reduction in sick leave, workers' compensation claims, and the associated costs of replacing an injured employee.

2. Compliance requirements:

Compliance with this rule would first require the employer to develop and post a written policy statement setting forth the goals and objectives expected from the workplace violence program. This statement would establish employer commitment to the process, a factor that is provided for in all the national consensus information (including NIOSH and the FBI) reviewed by the Department of Labor (DOL or ''the Department'') prior to drafting of the rule. The employer must also review injury and incident records and inspect the workplace to determine the risk factors to which employees are exposed, and to design an appropriate workplace violence prevention program. Finally, the employer is obligated to train employees. The Department expects the process to be conducted with the involvement of the employees or their authorized representatives.

The rule sets forth a phased-in deadline for compliance. The employer's workplace violence policy statement should be complete within 30 days from the effective date, the risk assessment and workplace examination within 60 days of the effective date, the written program within 75 days and full compliance within 120 days. DOL feels that 120 days from the adopted date of the rule would be adequate to make the rule fully effective.

3. Professional services:

Most public employers have access to law enforcement officers and security personnel who can assist them with the assessment of risk factors in their workplaces and the development of effective workplace violence prevention programs. Larger local agencies have full time safety and health officers or individuals who can implement a workplace violence prevention program. The rule is written so that the smaller the entity, the less complicated the program need be. Employers with fewer than 20 employees are not required to have a written program. Some employers may elect to hire private consultants, attorneys, or human resource professionals to develop their plan and train employees. Some employers may elect to share resources with other entities to develop their plans.

4. Compliance costs:

Compliance costs are expected to be minimal, particularly for smaller employers. Moreover, many will be helped through the Department's Public Employee Safety and Health Bureau consultation programs. Smaller employers can expect to be given assistance by the Department in the risk assessment process and provided with training assistance. Model programs will be made available. Most state agencies already have the resources to meet the requirements in a timely manner. Employers may elect to share resources with other entities in the development of their program.

5. Economic and technological feasibility:

Compliance is economically feasible using proven technology where necessary.

6. Minimizing adverse impact:

The rule reflects legislative requirements with regard to scope and content. Definitions have been added to clarify intent, and additional content has been based on the Department's review of national consensus standards, or reports which reference the least work-intensive means to implement an effective and compliant program. The Department intends to minimize the impact on smaller governments by providing outreach to these governments through our consultative service, and by working with and public employer organizations. Employers may elect to share services and resources with other entities in developing their programs.

7. Small business and local government participation:

This proposal will have no effect on small businesses as it applies only to public employers not exempt from the statute. In all cases, the paperwork requirements for local government may be met using existing documents required by other laws or electronic storage methods.

A number of local governments commented on a prior version of this rule either individually or through organizations representing them such as the Association of Towns of the State of New York, the New York State Association of Counties, and others. Employers and employees were encouraged to comment through publication of the prior draft in both the State Register and on the Department's website. The posting was available on the web from March 5, 2007 to April 15, 2007. The responses were read and, where appropriate, suggested changes were incorporated into this version of the proposal.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Labor (DOL) is proposing to promulgate 12 NYCRR Part 800.6 which implements programs to minimize the hazard of workplace violence for public sector employees. The New York State Department of Labor is unaware of any adverse impact to rural areas as a result of the proposed regulation.

Local government entities consisting of county, city and village offices, school districts fire districts and other special districts exist in rural areas of the state as designated by Executive Law § 481(7).

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

Rural public sector employers must develop and maintain workplace violence incident reporting and recordkeeping. Annual review of the workplace violence incident reports to identify trends in the types of incidents in the workplace and review of the effectiveness of the mitigating actions taken is required. The employer is currently required to keep injury and illness records under the PESH Act and would only need to expand on them slightly.

There is the possibility that employers would opt to hire a consultant firm to prepare the workplace violence prevention plan or retain the service of an attorney.

Local governments and other entities may elect to share resources in the development of the plan and training of employees.

3. Costs:

Compliance costs would be minimal and those would diminish as the employers get smaller in size. In most instances it will be hard to calculate cost for rural public employers. Many will be helped through the Department's Public Employee Safety and Health Bureau consultation programs. PESH will be available to provide model plans and to assist with training.

Costs for annual training and evaluation of the program are variable based on each employer plan. Employers with like workplaces and similar risks may elect to share resources in developing the plan and training employees.

4. Minimizing adverse impact:

The proposed rule will not adversely impact rural areas. Implementation would translate into a smaller amount of worker compensation benefits and leave, less overtime to cover shifts of injured employees and fewer disability benefits distributed.

The Public Employee Safety and Health Bureaus consultation serve will be available to assist in identifying risks and advising in the practices to mitigate those risks. Model programs and training will be made available.

5. Rural area participation:

A draft copy of the proposed rule was available during an informal public comment period. One rural county (Tioga) commented on the draft. That county had a program which was near compliant.

After the public hearing and comment period the Department held dialog with interested parties which included the Conference of Mayors, Association of Towns and The Association of Counties who represent many small communities as well as larger Cities. Comment was taken and incorporated in the changes.

Job Impact Statement

This rule concerns the development and implementation of workplace violence prevention programs for public sector employers. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Liability for Services

I.D. No. MRD-48-08-00021-P

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

Proposed Action: Addition of Subpart 635-12 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 41.25, 43.02 and 43.03

Subject: Liability for Services.

Purpose: To set forth requirements related to liability for services.

Public hearing(s) will be held at: 10:30 a.m., Jan. 12, 2009 at Bernard Fineson DC - Bldg. 1, 80-45 Winchester Blvd., Queens Village, New York, NY; 3:00 p.m., Jan. 14, 2009 at OMRDD - 44 Holland Ave., Counsel's Office Conference Rm., 3rd Fl., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: www.omr.state.ny.us):

- Adds a new Subpart 635-12 to 14 NYCRR, Liability for Services.
- Generally establishes that either an individual takes necessary steps to obtain and maintain Full Medicaid Coverage or the individual and/or liable parties pay for services.
- Requires individuals to take necessary steps to apply for HCBS waiver services, if they are requesting or receiving those services.
- Applies to the following services operated by voluntary providers: ICF/DDs, Medicaid Service Coordination, Day Treatment Services, and the following HCBS Waiver Services: Residential Habilitation Services (community (in a community residence), IRA, family care, and at home), Day Habilitation Services, Prevocational Services, Supported Employment Services, Respite Services, and Blended and Comprehensive Services which are a combination of the other Services.
- Requires all voluntary providers to establish fee schedules for the services listed above. The fees are required to be the same as the Medicaid fee, rate, or price established by OMRDD for the service.
- Defines ''liable party'' as someone who is liable to pay for services delivered to an individual pursuant to Section 43.03 of the Mental Hygiene Law or other law.
- Defines ''Full Medicaid Coverage'' as the type of coverage under the Medicaid program that pays for the services requested or received.
- Establishes that individuals and liable parties must provide personal and financial information upon the request of the provider. In some situations the provider is required to request this information.
- Establishes that individuals and liable parties must notify the provider if the individual loses Medicaid and if circumstances change that would affect the individual's eligibility for Medicaid or the individual's and/or liable persons' ability to pay for services.
- Establishes that individuals must either:
  (1) obtain and maintain Full Medicaid Coverage (with provider assistance if necessary),
  (2) agree to pay the full fee for the service (liable parties may agree in lieu of the individual),
  (3) agree to pay the fee as reduced by the provider and acknowledge certain conditions related to the reduction of the fee (Other liable parties may agree and acknowledge in lieu of the individual); or
  (4) acknowledge that the fee has been waived and certain conditions related to the waiver. (Other liable parties may acknowledge in lieu of the individual.)
- Requires the provider to give individuals and liable parties a schedule of fees and a notice that includes a description of the obligations of the provider, the individual and liable parties under the law and this regulation.
- Establishes a procedure for providers to reduce or waive fees with the approval of OMRDD.
- Defines ''Preexisting Services'' as those services that an individual was receiving on a regular basis as of February 15, 2009 and sets forth specific criteria for additional situations in which services are considered ''Preexisting Services.''
- Establishes a timetable for notifying individuals receiving Preexisting Services and liable persons that they have specified obligations and that they will be billed if the individual does not have Full Medicaid Coverage and the fees are not waived.
- Establishes that the provider will bill for Preexisting Services delivered on or after April 15, 2009 if the individual does not have Full Medicaid Coverage and the fees are not waived. Bills for services other than Preexisting Services are required to cover all dates that services are provided.
- Establishes standards for billing, collection and assignment of unpaid bills to OMRDD.

- Collection efforts cannot interfere with the individual's services.
- Establishes standards for the payment of state funds when the individual does not have Full Medicaid Coverage and the full fee is not paid by the individual or someone else. State funds will only be paid if the provider adheres to all relevant requirements.
- Establishes that state funds may pay for services other than Preexisting Services in situations when:
  (1) delaying the start of services may endanger the individual's health or safety,
  (2) the provider is legally prohibited from denying or discontinuing services,
  (3) the person lost Full Medicaid Coverage or private payments have stopped, and ending the services would endanger the person's health or safety,
  (4) OMRDD has approved a waiver or reduction in fees, or
  (5) MSC is needed for the individual to obtain Full Medicaid Coverage.
- Establishes that state funds may pay for Preexisting Services in situations when:
  (1) OMRDD was paying for the services or the individual had Full Medicaid Coverage immediately prior to February 15, 2009, or
  (2) OMRDD has approved a waiver or reduction in fees.
- A provider may not discharge an individual from Preexisting Services or otherwise discontinue Preexisting Services to an individual because of failure to pay.
- A provider may deny the request for Services:
  (1) if the individual does not have Full Medicaid Coverage; and
  (2) if the provider has not received reasonable assurance that the individual or other liable party will pay for the Services; and
  (3) if the fees have not been waived.

A provider may not deny Services to an individual if the provision of Services is otherwise required by law or court order.

- Except for Preexisting Services, a provider may discharge an individual or otherwise discontinue services because of failure to pay. Providers must adhere to the processes in 14NYCRR Section 633.12. Providers cannot discharge or discontinue services if the continuation of services is otherwise required by law or court order.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OMRDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

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

Public comment will be received until: Five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has on file a Negative Declaration with respect to this Action. OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory authority:

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

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

c. Section 41.25 of the Mental Hygiene Law requires that fees charged or payments requested take into account costs and ability to pay, considering resources available from private and public health insurance and medical aid programs.

d. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates and fees for services in facilities licensed or operated by OMRDD.

e. Section 43.03 of the Mental Hygiene Law establishes liability for fees for services. The individual, his/her estate, spouse, parents or guardian if the individual is under 21, and representative payee or fiduciary holding assets for the individual are jointly and severally liable for the fees. Parents or spouses of parents are not liable for fees for services rendered to a disabled child under 21 if the child does not reside in the common household.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, 41.25, 43.02 and 43.03 of the Mental Hygiene Law by promoting personal responsibility to contribute to the cost of care and equity in the application of liability to individuals and other liable parties for developmental disabilities services provided by not-for-profit agencies operating under the auspices of OMRDD. The proposed amendments will establish a process that will require individuals with developmental disabilities to take all necessary steps to obtain and maintain Medicaid coverage or for the individual and/or liable persons to pay for the services. In a restrictive fiscal environment, individuals (and liable persons) with the ability to pay should contribute to the cost of their services, and individuals eligible for Medicaid should obtain Medicaid coverage. This, in turn, allows OMRDD to serve more individuals with limited resources.

3. Needs and benefits: The overwhelming majority (98 percent) of persons served by the OMRDD service delivery system qualify for funding of their services by Medicaid. Medicaid pays for most developmental disabilities services. While Medicaid is a major component of the State's budget for developmental disabilities services, there remain isolated instances of individuals who are or could be eligible for Medicaid but who have not applied for Medicaid. In most of these instances, OMRDD pays the provider for these services with State funds, raising questions of equity and resulting in expenditures that OMRDD would otherwise be capable of redirecting to provide services to other people.

The proposed regulations require that the provider of services establish a basic fee schedule which is the Medicaid rate, fee or price established by OMRDD for the applicable program or service. If the individual does not take all necessary steps to obtain and maintain Medicaid coverage, the provider will be required to bill the individual and other liable persons according to that fee schedule and make reasonable efforts to collect unpaid bills. After making reasonable collection efforts, the provider will assign to OMRDD the claim for any unpaid amount. It is expected that this process will lead to more persons receiving developmental disabilities services applying for Medicaid, thereby increasing OMRDD's ability to serve more people. Individuals may also apply to the provider for a reduction or waiver of the fee, which can be granted with OMRDD approval in certain circumstances.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD will not incur any new costs as a result of these amendments. OMRDD estimates that implementation of the regulations will create an estimated savings to the State of approximately $ 17.5 million as services currently funded with 100 percent State monies become funded with 50 percent participation of federal funds and some individuals or liable parties pay the fees established. There will be no additional costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are some additional costs to individuals and providers associated with implementation and continued compliance with the amendments. Providers will incur costs in gathering financial and personal information, helping persons apply for Medicaid and in issuing notices and fee schedules. However, OMRDD's Revenue Support Field Offices will assist in gathering information, and OMRDD will issue model notices for providers to use. Also, because the provider community already assists individuals in applying for Medicaid benefits, OMRDD anticipates that most providers will not incur significant costs assisting individuals in obtaining and maintaining Medicaid benefits. Furthermore, OMRDD has, in cooperation with the Provider Associations, formed a Benefit Development Workgroup to help the providers develop their own expertise in maximizing benefits for the people they serve. This initiative has produced a Benefit Development Resource Guide which serves as a reference tool on how to file for and maintain Medicaid.

Providers will also incur costs in billing and collection efforts, but after reasonable collection efforts, the provider will assign the claim to OMRDD. After the assignment, the cost of all further collection efforts, including costs for attorneys, will be borne by the State.

c. Costs to individuals and families: Although the regulations require that an individual take all necessary steps to obtain and maintain Medicaid coverage or privately pay as a prerequisite for receiving services from an OMRDD authorized service provider, individuals will not have services they are already receiving stopped because providers must continue to render services while collection efforts are undertaken. Individuals requesting new services will have the option to obtain and maintain Medicaid coverage or privately pay. Individuals may also apply to the provider for a reduction or waiver of the fee, which can be granted with OMRDD approval in certain circumstances.

Individuals will be expected to cooperate with the provider and take all necessary steps to obtain and maintain Medicaid coverage or pay for the services themselves. OMRDD will continue its support to assist individuals in filing for Medicaid through a combination of funding service coordination and by the technical assistance of OMRDD's Revenue and Support Field Offices (RSFOs). This will mitigate any negative impact on individuals.

In some instances individuals may need legal advice in establishing

Medicaid exception trusts. However, since a Medicaid exception trust is only necessary if a person has substantial assets, persons needing such a trust to qualify for Medicaid have assets to pay the legal fees for establishing the trust. Also, a Medicaid exception trust is extremely beneficial for a person in that it gives the person Medicaid funding for services, and still lets him or her have the use of the assets for his or her lifetime.

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

6. Paperwork: For individuals and their parents, the requirement to file for Medicaid will involve completion of the necessary application paperwork (by themselves or the provider) and cooperation or participation in any appeals processes. The maintenance of the Medicaid benefit involves taking the necessary steps (filing recertification applications, meeting monthly spend downs) to maintain the individual's continued eligibility.

As already stated, over 98 percent of the persons served under the auspices of OMRDD have already been taking all steps involved with Medicaid application and maintenance of eligibility. And, as stated under Costs section of this Regulatory Impact Statement, current service recipients and individuals requesting services can all rely on the assistance and expertise of OMRDD's Revenue Support Field Offices and service coordinators to help them file the proper paperwork to receive and maintain eligibility for Medicaid.

Under the proposed regulations, providers will be required to give notices and a fee schedule to all individuals currently receiving services who do not have Medicaid coverage. If individuals and liable persons decline to cooperate with the provider in obtaining and maintaining Medicaid coverage for the individual, the providers will bill them for the services and make reasonable efforts to collect on the bills. After reasonable collection efforts have been made providers will be required to send paperwork associated with assigning the unpaid debt to OMRDD. OMRDD will draft notices for providers to use and will draft the legal papers assigning the debt to OMRDD. Providers will not have to write these documents themselves.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited services for persons with developmental disabilities.

8. Alternatives: There is no viable alternative to issuance of a regulation that requires individuals to file for benefits or pay for services. OMRDD has been working with its service providers to maximize participation in Medicaid. However, a small number of representatives and attorneys for individuals have said that they will not act until the State mandates full cooperation. These regulations will ensure that all individuals in the OMRDD service delivery system are served and treated in an identical fashion, and that Medicaid is claimed to support the cost of such services when individuals are eligible. Providers of services have, themselves, suggested that establishing the Medicaid participation requirement in regulation would help them to enforce OMRDD policy.

9. Federal standards: The proposed regulations do not exceed any applicable federal standards.

10. Compliance schedule: As previously stated, the overwhelming majority of persons served by the OMRDD service delivery system are already in compliance with the requirements set forth in the regulations.

For persons requesting new services the regulations will reinforce current OMRDD policy which requires that the individual cooperate with the service provider in taking all necessary steps to obtain and maintain Medicaid coverage or private pay. Within one month after the regulation is in effect, providers will have to give persons already receiving services notices about their and the providers' rights and obligations under the regulations. Beginning with services delivered two months after the effective date of the regulation, providers will be required to issue bills to these persons if they do not have Medicaid coverage.

When it is necessary for the provider to issue a bill, it must present the bill no later than thirty days after the month in which the services were rendered.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide developmental disabilities services under the auspices of OMRDD. While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites (e.g. small residences) employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. As of September 2008, OMRDD estimates that there are approximately 715 provider agencies that would be affected by the proposed amendments.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not have any negative effects on these small business providers of developmental disabilities services.

The proposed amendments will establish a process that will require individuals with developmental disabilities to take all necessary steps to obtain and maintain Full Medicaid Coverage or, for the individual and/or liable parties to pay for the services. In a restrictive fiscal environment, individuals and liable parties with the ability to pay should contribute to the cost of their services. This, in turn, allows OMRDD to serve more individuals with limited resources.

The overwhelming majority (98 percent) of individuals served by the OMRDD service delivery system qualify for funding of their services by Medicaid. Medicaid pays for most developmental disabilities services. While Medicaid is a major component of the State's budget for developmental disabilities services, there remain isolated instances of individuals who are or could be eligible for Medicaid but who have not applied for Medicaid. In most of these instances, OMRDD pays the provider for these services with State funds, raising questions of equity and resulting in expenditures that OMRDD would otherwise be capable of redirecting to provide services to other people.

The proposed regulations require that the provider of services establish a basic fee schedule which is the Medicaid rate, fee or price established by OMRDD for the applicable program or service. If the individual does not take all necessary steps to obtain and maintain Medicaid coverage, the provider will be required to bill the individual and other liable persons according to that fee schedule and make reasonable efforts to collect unpaid bills. After making reasonable collection efforts, the provider will assign to OMRDD the claim for any unpaid amount. It is expected that this process will lead to more persons receiving developmental disabilities services applying for Medicaid, thereby increasing OMRDD's ability to serve more people. Individuals may also apply to the provider for a reduction or waiver of the fee, which can be granted with OMRDD approval in certain circumstances.

There will be no additional costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

2. Compliance requirements: As discussed in the Regulatory Impact Statement, providers will have to meet requirements in gathering financial and personal information, helping persons apply for Medicaid and in issuing notices and fee schedules. However, OMRDD's Revenue Support Field Offices will assist in gathering information, and OMRDD will issue notices for providers to use. Also, because the provider community already assists individuals in applying for Medicaid benefits, OMRDD anticipates that most providers will not incur significant costs assisting individuals in obtaining and maintaining Medicaid benefits. Furthermore, OMRDD has, in cooperation with the Provider Associations, formed a Benefit Development Workgroup to help the providers develop their own expertise in maximizing benefits for the people they serve. This initiative has produced a Benefit Development Resource Guide which serves as a reference tool on how to file for and maintain Medicaid.

Providers will also incur costs in billing and collection efforts, but after reasonable collection efforts, the provider will assign the claim to OMRDD. After the assignment, the cost of all further collection efforts, including costs for attorneys, will be borne by the State.

Individuals will be expected to cooperate with the provider of services and take all necessary steps to obtain and maintain full Medicaid coverage or pay for the services themselves. OMRDD will continue its support to assist individuals and their representatives in filing for Medicaid through a combination of service coordination and by the technical assistance of OMRDD's Revenue Support Field Offices (RSFOs). This will mitigate any negative impact on individuals, families and their representatives.

OMRDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with these regulations, as provided for by section 102-a of the State Administrative Procedure Act. As noted above, OMRDD has already produced a Benefit Development Resource Guide that has been issued as a CD to providers and service coordinators. This guide serves as a reference tool on how to file for and maintain most major benefits.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments. For individuals and their parents who are a seeking to be served by the OMRDD system, or for individuals who are already being served but have not obtained or maintained full Medicaid coverage, it may occasionally be necessary to seek legal advice associated with establishing a Medicaid exception trust. For providers of services, the notices and billing requirements will entail a slight increase in administrative effort, but this will be more than offset by the additional revenues available to the service delivery system.

4. Compliance costs: As stated, for small business providers of services, there are some additional costs to individuals and providers associ-

ated with implementation of, and continued compliance with, these proposed amendments. Providers will incur costs in gathering financial and personal information, helping persons apply for Medicaid and in issuing notices and fee schedules. However, OMRDD's Revenue Support Field Offices will assist in gathering information, and OMRDD will issue notices for providers to use. Also, because the provider community already assists individuals in applying for Medicaid benefits, OMRDD anticipates that most providers will not incur significant costs assisting individuals in obtaining and maintaining Medicaid benefits. Furthermore, OMRDD has, in cooperation with the Provider Associations, formed a Benefit Development Workgroup to help the providers develop their own expertise in maximizing benefits for the people they serve. This initiative has produced a Benefit Development Resource Guide which serves as a reference tool on how to file for and maintain Medicaid.

Providers will also incur costs in billing and collection efforts, but after reasonable collection efforts, the provider will assign the claim to OMRDD. After the assignment, the cost of all further collection efforts, including costs for attorneys, will be borne by the State.

Although the regulations require that an individual take all necessary steps to obtain and maintain Medicaid coverage or privately pay as a prerequisite for receiving services from an OMRDD authorized service provider, individuals will not have services they are already receiving stopped because providers must continue to render services while collection efforts are undertaken. Individuals requesting new services will have the option to obtain and maintain Medicaid coverage or privately pay. Individuals may also apply to the provider for a reduction or waiver of the fee, which can be granted with OMRDD approval in certain circumstances.

Individuals will be expected to cooperate with the provider and take all necessary steps to obtain and maintain Medicaid coverage or pay for the services themselves. OMRDD will continue its support to assist individuals in filing for Medicaid through a combination of funding service coordination and by the technical assistance of OMRDD's Revenue and Support Field Offices (RSFOs). This will mitigate any negative impact on individuals.

In some instances individuals may need legal advice in establishing Medicaid exception trusts. However, since a Medicaid exception trust is only necessary if a person has substantial assets, persons needing such a trust to qualify for Medicaid have assets to pay the legal fees for establishing the trust. Also, a Medicaid exception trust is extremely beneficial for a person in that it gives the person Medicaid funding for services, and still lets him or her have the use of the assets for his or her lifetime.

5. Economic and technological feasibility: The proposed amendments are concerned with fiscal and administrative issues, and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The amendments will not result in any significant adverse economic impacts.

7. Small business and local government participation: The proposed rule making is in response to the recognition that providers of services need, in regulation, a requirement and process that will assist them in securing the cooperation of service recipients in obtaining and maintaining Medicaid or service recipients and liable parties in paying for the services. The proposed regulations have been developed in consultation with small business providers of services. Most recently, the draft regulations were shared with representatives of provider associations, and were discussed at a meeting of provider associations on Sept. 24, 2008. The regulations were also shared with the Self Advocacy Association of New York State (an organization of people who receive services), Parent to Parent (a parent organization) and the Commissioner's Advisory Council which includes representation by service providers, parents, service recipients and their advocates. The proposed regulations were also shared with the Willowbrook Consumer Advisory Board, New York Civil Liberties Union and New York Lawyers for the Public Interest.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this rule making is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. As discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments, providers of services may find there is some administrative effort associated with the notice and billing requirements of the proposed regulations, however, these relatively minor effects will not disproportionately impact providers as a result of the region of New York State in which they provide services or the location (rural, urban or suburban) of their operations.

Job Impact Statement

A Job Impact Statement for this rule making is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. The proposed new Subpart will regulate a process that will require individuals with developmental disabilities and persons representing them to take all necessary steps to obtain and maintain Medicaid coverage or, for the individual and/or liable persons, to pay for the services. The proposed regulations will not change the nature or volume of services provided under the auspices of OMRDD to persons with developmental disabilities, so that it is reasonable to expect that they will have no impact on jobs and/or employment opportunities in New York State.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

A National Grid High Efficiency Gas Heating Equipment Rebate Program

I.D. No. PSC-48-08-00005-P

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

Proposed Action: The Commission is considering whether to remove the prohibition on National Grid offering rebates for high efficiency gas heating equipment to customers converting from oil in Long Island and New York City.

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

Subject: A National Grid high efficiency gas heating equipment rebate program.

Purpose: To expand eligibility to customers converting from oil to natural gas.

Substance of proposed rule: The Commission's July 18, 2007 Order in this proceeding authorized gas energy efficiency programs in the Company's Long Island and New York City service territories, but specified that customers converting from oil to gas would not be eligible for incentives or other benefits under the programs. On October 8, 2008, National Grid filed a petition requesting that the Commission remove this prohibition. Removal of the prohibition could potentially avoid lost opportunities for efficiency savings. As customers converting to gas make decisions to purchase new heating equipment, rebates could cause them to purchase more efficient equipment than they would have purchased in the absence of the rebates.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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

(06-G-1186SA4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-48-08-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 808 Columbus, LLC, to submeter electricity at 808 Columbus Avenue, in New York, New York.

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 808 Columbus, LLC, to submeter electricity at 808 Columbus Avenue, in New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 808 Columbus, LLC, to submeter electricity at 808 Columbus Avenue, in New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1203SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-48-08-00007-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 Toren Condominiums, to submeter electricity at 150 Myrtle Avenue, Brooklyn, New York.

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 Toren Condominiums, to submeter electricity at 150 Myrtle Avenue, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Toren Condominiums, to submeter electricity at 150 Myrtle Avenue, in 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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1131SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Master Metering and Submetering of Electricity

I.D. No. PSC-48-08-00008-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bay City Metering Company, Inc., to master meter & submeter electricity at 345 East 81st Street, New York, New York.

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

Subject: Petition for the master metering and submetering of electricity.

Purpose: To consider the request of Bay City Metering, to master meter & submeter electricity at 345 E. 81st St., New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bay City Metering Company, Inc., on behalf of the Board of Directors of 345 East 81st Street, a residential cooperative, to master meter and submeter electricity at 345 East 81st Street, in New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1247SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-48-08-00009-P

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

Proposed Action: The PSC is considering the petition filed by PCV ST Owner, LP, and ST Owner, LP (PCV/ST) to submeter electricity.

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 PCV/ST to submeter electricity at Peter Cooper Village & Stuyvesant Town, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by PCV/ST Owner, LP, a/k/a Peter Cooper Village and Stuyvesant Town Owner, LP, to submeter electricity at Peter Cooper Village and Stuyvesant Town, at numerous addresses between 23rd Street to the North, 1st Avenue to the West, 14th Street to the South, and Avenue C to the East, in New York, New York, located in the territory of Consolidated Edison Company of New York, Inc. The building development complex consists of 110 buildings and 11,232 residential apartments.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
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-1275SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems

I.D. No. PSC-48-08-00010-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation conforming its tariff to new statutory requirements of section 66-j of Public Service Law (PSL) regarding net metering.

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

Subject: Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems.

Purpose: To propose changes to its net metering program to comply with a change in PSL section 66-j.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson) proposal to conform its tariff to reflect amendments made to Section 66-j of the Public Service Law which became effective on August 5, 2008. Central Hudson proposes to revise its tariff to include changes to the maximum size of residential photovoltaic generation and farm waste generation systems eligible for net metering, expansion of net metering to non-residential photovoltaic generation systems up to 2MW or the customer's historic peak load, whichever is less, and an increase to the ceiling for the net metering photovoltaic and farm waste generator load on Central Hudson's system to 12 MW, or one percent of the Central Hudson's electric demand of 1201 MW for 2005. The revisions have a proposed effective date of February 5, 2009. Central Hudson is also requesting that the Commission expand the current authority for the deferral, for future recovery, of delivery revenue losses attributable to the growth of net metered photovoltaic generation in Central Hudson's service territory to include the changes to net metering required by the August 5, 2008 amendments to Section 66-j. The Commission may approve, reject or modify, in whole or in part Central Hudson'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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
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-1305SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems

I.D. No. PSC-48-08-00011-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 a proposal filed by Consolidated Edison Company of New York, Inc. conforming its tariff to new statutory requirements of sections 66-j and 66-l of Public Service Law (PSL) regarding net metering.

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

Subject: Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems.

Purpose: To propose changes to its net metering program to comply with a change in PSL sections 66-j and 66-l.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s (Con Edison) proposal to establish new tariff provisions to its net metering program. The proposed new provisions comply with a change in Public Service Law Sections 66-j and 66-l, which extends net metering to non-residential solar and non-residential wind customer generators and enhances net metering provisions for farm waste, farm wind and electric residential solar customer-generators. Con Edison also proposes to defer establishing the effective date for net metering for customers to be served under Rider R – Net Metering for Customer-Generators in conjunction with Rider M – Day-ahead Hourly Pricing or Rider Q – Power for Jobs. The revisions have a proposed effective date of February 5, 2009. The Commission may approve, reject or modify, in whole or in part Con Edison'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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
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-1306SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems

I.D. No. PSC-48-08-00012-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 a proposal filed by Orange and Rockland Utilities, Inc. conforming its tariff to new statutory requirements of sections 66-j and 66-l of Public Service Law (PSL) regarding net metering.

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

Subject: Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems.

Purpose: To propose changes to its net metering program to comply with a change in PSL sections 66-j and 66-l.

Substance of proposed rule: The Commission is considering Orange and Rockland Utilities, Inc.'s (O&R) proposal to establish new tariff provisions to its net metering program. The proposed new provisions comply with a change in Public Service Law Sections 66-j and 66-l, which extends

net metering to non-residential solar and non-residential wind customer generators and enhances net metering provisions for farm waste, farm wind and electric residential solar customer-generators. In its proposal, O&R also requests a deferral in establishing the effective date for net metering for customers served under Rider N - Net Metering for Customer Generators, in conjunction with Rider G - NYPA - EDP Delivery Service, Rider M - Voluntary Day-Ahead Hourly Pricing, Rider J - NYPA Power for Jobs, or customers subject to mandatory day-ahead hourly pricing. The revisions have a proposed effective date of February 5, 2009. The Commission may approve, reject or modify, in whole or in part O&R'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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1307SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems

I.D. No. PSC-48-08-00013-P

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

Proposed Action: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid conforming its tariff to new statutory requirements of section 66-j of Public Service Law (PSL) regarding net metering.

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

Subject: Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems.

Purpose: To propose changes to its net metering program to comply with a change in PSL section 66-j.

Substance of proposed rule: The Commission is considering Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) proposal to conform its tariff to reflect amendments made to Section 66-j of the Public Service Law (PSL) which became effective on August 5, 2008. National Grid proposes to establish new tariff provisions to its net metering program to comply with the change to PSL Section 66-j which extends net metering to residential solar, farm waste or non-residential solar electric generating systems. The revisions have a proposed effective date of February 5, 2009. The Commission may approve, reject or modify, in whole or in part National Grid'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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1308SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems

I.D. No. PSC-48-08-00014-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 a proposal filed by Rochester Gas and Electric Corporation conforming its tariff to new statutory requirements of section 66-j of Public Service Law (PSL) regarding net metering.

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

Subject: Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems.

Purpose: To propose changes to its net metering program to comply with a change in PSL section 66-j.

Substance of proposed rule: The Commission is considering Rochester Gas and Electric Corporation's (RG&E) proposal to conform its tariff to reflect amendments made to Section 66-j of the Public Service Law (PSL) which became effective on August 5, 2008. RG&E proposes to establish new tariff provisions to its net metering program to comply with the change to PSL Section 66-j which extends net metering to residential solar, farm waste or non-residential solar electric generating systems. The revisions have a proposed effective date of February 5, 2009. The Commission may approve, reject or modify, in whole or in part RG&E'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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1309SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems

I.D. No. PSC-48-08-00015-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 a proposal filed by New York State Electric & Gas Corporation conforming its tariff to new statutory requirements of section 66-j of Public Service Law (PSL) regarding net metering.

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

Subject: Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating Systems.

Purpose: To propose changes to its net metering program to comply with a change in PSL section 66-j.

Substance of proposed rule: The Commission is considering New York State Electric & Gas Corporation's (NYSEG) proposal to conform its tariff to reflect amendments made to Section 66-j of the Public Service Law (PSL) which became effective on August 5, 2008. NYSEG proposes to establish new tariff provisions to its net metering program to comply with the change to PSL Section 66-j which extends net metering to resi-

dential solar, farm waste or non-residential solar electric generating systems. The revisions have a proposed effective date of February 5, 2009. The Commission may approve, reject or modify, in whole or in part NYSEG'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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1310SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Defer Incurred Site Investigation and Remediation Costs

I.D. No. PSC-48-08-00016-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 request filed by National Fuel Gas Distribution Corporation, to defer site investigation and remediation costs associated with a manufactured gas site.

Statutory authority: Public Service Law, section 66

Subject: To defer incurred site investigation and remediation costs.

Purpose: To authorize deferral of specific site investigation and remediation costs.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the request filed September 16, 2008 by National Fuel Gas Distribution Corporation (the company), that the Commission affirm that the deferral of site investigation and remediation (SIR) costs for the manufactured gas site of 126 East Niagara Street in Tonawanda, New York is appropriate because either (a) the Commission has afforded the company's blanket deferral policy for such costs for all sites or, (b) in the alternative, that the SIR deferral policy extend only to identified sites and that deferral of SIR costs for 126 East Niagara Street be specifically approved. As a result of an Order on Consent reached with the New York State Department of Environmental Conservation (DEC) on July 16, 2008, National Fuel Gas Distribution has agreed to undertake a remediation of 126 East Niagara Street in cooperation with the DEC. The DEC estimates the remediation may cost approximately $8.9 million, while the company's own estimates indicate the remediation may cost more than $12.6 million. The Commission may approve, modify or reject, in whole or in part the request of National Fuel Gas Distribution Corporation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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

(08-G-1315SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Securities

I.D. No. PSC-48-08-00017-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 a petition filed by Consolidated Edison Company of New York, Inc. requesting permission to issue and sell securities.

Statutory authority: Public Service Law, section 69

Subject: Issuance of Securities.

Purpose: To permit the Company to issue and sell securities.

Substance of proposed rule: On October 20, 2008, Consolidated Edison Company of New York, Inc. submitted a petition seeking authority (i) to issue and sell not to exceed $4.8 billion aggregate principal amount of unsecured debt obligations having a maturity of more than one year (in addition to any such debt remaining authorized for issue pursuant to the Public Service Commission's order, issued and effective May 18, 2005 in Case 05-M-0037), for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through June 30, 2008; (ii) to enter into or continue one or more revolving credit agreements and to issue and sell not to exceed $2.25 billion aggregate principal amount at any time outstanding of unsecured debt obligations having a maturity of more than one year pursuant to such agreement(s), such issuance and sale to be for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through June 30, 2008; and (iii) to issue and sell unsecured debt obligations having a maturity of more than one year and preferred stock for the purposes of refunding in advance of maturity outstanding securities of the Company.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1244SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

LEA's Request for Lightened Regulation as an Electric and Steam Corporation

I.D. No. PSC-48-08-00018-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 to approve, reject or modify a request by Lockport Energy Associates L.P. (LEA) for an order providing for lightened regulation of LEA as an electric and steam corporation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 80(1) and 110

Subject: LEA's request for lightened regulation as an electric and steam corporation.

Purpose: To provide for lightened regulation of LEA.

Substance of proposed rule: In a petition filed November 04, 2008 Lockport Energy Associates L.P. (LEA) seeks a Certificate of Public Convenience and Necessity to authorize it to provide retail steam sales to

Delphi Automotive Systems, LLC in Lockport, New York. In connection with this request for licensing, LEA requests lightened regulation as an electric and steam corporation. LEA requests that these actions take effect upon the termination of the qualifying status of its cogeneration facility under the Public Utilities Regulatory Policies Act 1978.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1301SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-48-08-00019-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, tariff revisions filed by Greentree Water Company, Inc., to become effective March 1, 2009, to increase its annual revenues by $21,425 or 67%.

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

Subject: Water rates and charges.

Purpose: For approval to increase Greentree Water Company, Inc.'s annual revenues by $21,425 or 67%.

Substance of proposed rule: On November 3, 2008 Greentree Water Company, Inc. (Greentree or the company) electronically filed Leaf Nos. 1 - 12 to P.S.C. No. 1 - Water, to become effective on March 1, 2009. The company has filed new rates to produce additional annual revenues of $21,425 or approximately 67%. Greentree is also converting its paper tariff to an electronic tariff. The company provides metered water service to approximately 91 residential customers in the Town of Thompson, Sullivan County.

The company's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Access to Commission Documents - Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1292SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deferral of an Expense Item

I.D. No. PSC-48-08-00020-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, deny, or modify, in whole or in part, a request by Orange and Rockland Utilities, Inc. (O&R) to defer incremental costs related to interest cost increases and retirement and refinancing of tax exempt debt.

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

Subject: Deferral of an expense item.

Purpose: To consider whether and to what extent the Commission should authorize O&R to defer certain incremental costs.

Substance of proposed rule: The Commission is considering whether to approve, deny, or modify, in whole or in part, a petition of Orange and Rockland Utilities, Inc. (O&R), dated October 31, 2008 for authorization to defer certain costs. O&R is requesting authorization to defer incremental costs of approximately $5.7 million related to interest cost increases and costs related to the retirement and refinancing of two issues of tax exempt debt, allocated to the Company's gas operations. In addition, O&R is seeking authorization defer incremental debt service costs of approximately $566,200, allocated to the Company's electric operations between January 1, 2008 and June 30, 2008.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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-1299SA1)

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations

I.D. No. SUN-27-08-00009-A
Filing No. 1112
Filing Date: 2008-11-05
Effective Date: 2008-11-26

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

Action taken: Amendment of Part 562 of Title 8 NYCRR.

Statutory authority: Education Law, section 360

Subject: Traffic and parking regulations.

Purpose: To make technical changes and amend existing regulations to parking permits, towing and fines of SUNY College at Buffalo.

Text or summary was published in the July 2, 2008 issue of the Register, I.D. No. SUN-27-08-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Angela Winn, SUNY, State University Plaza, Albany, NY 12246, (518) 443-5400, email: angela.winn@suny.edu

Assessment of Public Comment
The agency received no public comment.

Office of Temporary and Disability Assistance

EMERGENCY RULE MAKING

Utility Service

I.D. No. TDA-48-08-00001-E
Filing No. 1111
Filing Date: 2008-11-05
Effective Date: 2008-11-05

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

Action taken: Amendment of section 352.5(e) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 131-s

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

Specific reasons underlying the finding of necessity: This rule is being proposed on an emergency basis because of the threat to the health and safety of households if they suffer utility shutoffs in the cold weather period as a result of the unprecedented high energy costs. It is crucial that the rule be in place as the heating season begins.

Subject: Utility service.

Purpose: To permit social services districts to suspend the enforcement of utility repayment agreements during periods of cold weather in order to provide districts with the flexibility to assist households during the current historic rise in energy costs.

Text of emergency rule: Subdivision (e) of section 352.5 is amended to read as follows:

(e) Payment essential to continue or restore utility service for an applicant for family assistance, safety net assistance, veteran assistance or emergency public assistance. A payment must be made for utilities previously provided to an applicant for family assistance, safety net assistance, veteran assistance or emergency public assistance if such payment is essential to continue or restore utility service. Payment essential to continue or restore utility service may be provided to an applicant whose utility bill includes costs for service for the applicant's own residential unit and for space outside that unit. Payment may only be made when it is documented that the applicant is the tenant of record and the customer of record, as defined in subdivision (a) of this section, and alternative payment or housing accommodations cannot be made and the applicant is without liquid resources to continue or restore utility service. Payment must not exceed the cost of utilities provided to the applicant during the four most recently completed monthly billing periods or two most recently completed bimonthly billing periods for which a bill has been issued immediately preceding the date of application for such assistance. Payment is limited to the applicant's proportionate share of the cost of service for the most recently completed four monthly or two most recently completed bimonthly billing periods for which a bill has been issued immediately preceding the date of application for such assistance when the applicant's utility bill includes costs for service for the applicant's own residential unit and for space outside that unit. Payment must not exceed the balance due on the account. In a shared meter situation subject to the provisions of section 52 of the Public Service Law, the proportionate share is to be determined by the utility company's apportionment of retroactive charges upon completion of a shared meter investigation and determination. As a condition of receiving such assistance, an applicant not in receipt of recurring public assistance or supplemental security income whose gross monthly household income on the date of application exceeds the public assistance standard of need for the same size household must sign an agreement to repay the assistance within one year of the date of the payment. A household consists of all persons who occupy a housing unit. A house, an apartment or other group of rooms, or a single room is regarded as a housing unit when it is occupied or intended for occupancy as separate living quarters. A household includes related family members and all unrelated persons, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone, or a group of unrelated persons sharing a housing unit as partners, also constitutes a household. The public assistance standard of need is determined by applying the following statewide standards of need in accordance with office regulations: the pre-add allowance as set forth in Schedule SA-2a of section 352.3 of this Part; the shelter allowance as paid, but not to exceed the maximum allowance set forth in section 352.3 of this Part; the fuel allowance set forth in Schedule SA-6a, SA-6b or SA-6c of section 352.5;2745;2745 of this Part, if the applicant is the tenant of record and customer of record for the residential heating bill; the home energy and supplemental home energy payments (HEA and SHEA) as set forth in schedule SA-2b or SA-2c of section 352.1 of this Part; and, if applicable, the additional cost of meals for persons unable to prepare meals at home as set forth in schedule SA-5 of section 352.7 of this Part. The repayment agreement must set forth a schedule of payments that will assure repayment within one year of the date of payment. Subsequent assistance to continue or restore utility service must not be provided unless any prior utility arrearage payments have been repaid or are being repaid in accordance with the schedule of payments contained in each prior repayment agreement as of the date of application for such subsequent assistance*, or unless the enforcement of such prior repayment agreement(s) is suspended by the local social services district during a period of cold weather, defined as the time period from November 1st of each year and ending April 15th of the following year*. Repayment agreements under this subdivision may be enforced in any manner available to a creditor, in addition to any other remedy the district may have pursuant to the Social Services Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 2, 2009.

Text of rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 131(1) of the SSL requires social services districts, insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Section 131-s of the SSL governs payments made for utility services for applicants and recipients of public assistance benefits, supplemental security income benefits or additional State payments. Subdivision (1) of the section requires applicants whose gross household income exceeds the public assistance standard of need for the same size household to sign a repayment agreement to repay the assistance within one year of the date of payment as a condition of receiving assistance in accordance with regulations established by OTDA.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that adequate provision is made for those persons unable to provide for themselves so that whenever possible, such persons can be restored to a condition of self-support and self-care.

3. Needs and benefits:

Section 131-s of the Social Services Law and the current regulation, 18 NYCRR § 352.5(e), permit social services districts to make payments to continue utility service or to restore such service. Certain households, whose gross income exceeds the public assistance standard of need, must sign a repayment agreement in order to have their utility arrears paid. Pursuant to 18 NYCRR § 352.5(e), households who have not or are not repaying their repayment agreements are not eligible to sign a new repayment agreement and receive new utility arrears payments.

This proposed amendment to 18 NYCRR § 352.5(e) would permit

districts to suspend the enforcement of repayment agreements during a period of cold weather, defined as the time period from November 1st of each year and ending April 15th of the following year. The goal of the amendment is to provide social services districts with the flexibility to assist households during the current historic rise in energy costs. Districts would have the flexibility to provide utility arrears and to enter into new repayment agreements even though a prior such agreement has not been repaid or is not being repaid. The suspension of enforcement of the agreement during the period of cold weather would not end the obligation to repay but simply permit the district to meet a current utility emergency.

The regulation is being proposed on an emergency basis because of the threat to the health and safety of households if they suffer utility shutoffs in the cold weather period as a result of the unprecedented high energy costs. It is crucial that the regulation be in place before the heating season begins.

The proposed regulation defines the period of cold weather as the time period from November 1st of each year and ending April 15th of the following year. This definition is the same time period that is referenced in the Public Service Regulations at 16 NYCRR § 11.5(c)(2), which is part of the Home Energy Fair Practices Act and Energy Consumer Protection Act.

4. Costs:

The proposed amendment simply would provide the social services districts the option of suspending enforcement of prior repayment agreements during the period of cold weather. The amendment would not negate the obligation to repay. Due to this option, it is anticipated that there will be an increase in the number of utility assistance payments provided to certain households, whose gross income exceeds the public assistance standard of need. However, this additional fiscal impact would be remedied, in part, by the reinstitution of repayment agreements once the designated period of cold weather ends. Pursuant to regulatory requirements, a person who has a suspended repayment agreement during the period of cold weather would still be required to repay the full amount of the assistance owed once this period ends.

In addition, costs incurred due to the payment of additional utility assistance would be offset to the extent that temporary housing assistance is not needed for households that would otherwise experience heat or utility shut-offs during cold weather. It is anticipated that fewer persons will need to be re-housed due to heat and utility emergencies.

As a result of these considerations, the fiscal impact of this regulatory change is expected to be minimal, since repayment of assistance could merely be delayed and there is offsetting cost-avoidance.

5. Local government mandates:

Districts would be permitted to suspend the enforcement of prior repayment agreements during the defined period of cold weather. The amendment would not impose any other programs, services, duties or responsibilities upon the social districts. Districts are now required to review a household's current gross income prior to issuing a denial of the current applications for public assistance.

6. Paperwork:

There would be no additional forms required to support this process.

7. Duplication:

The proposed amendment would not duplicate, overlap or conflict with any existing State or Federal regulations.

8. Alternatives:

The alternative is to amend section 131-s of the SSL altering the repayment agreement requirement. However, this proposed regulatory amendment is a better option because it would be more timely. The proposed regulatory amendment would allow the social services districts to meet the immediate energy needs of applicants this winter.

9. Federal standards:

The proposed amendment would not conflict with federal standards for public assistance.

10. Compliance schedule:

Districts would be able to implement the proposed amendment when it becomes effective.

Regulatory Flexibility Analysis

1. Effect of rule:

This proposed amendment would impact local governments, specifically social services districts, but not small businesses.

2. Compliance requirements:

This proposed amendment to 18 NYCRR § 352.5(e) would permit social services districts to suspend the enforcement of repayment agreements during a period of cold weather, defined as the time period from November 1st of each year and ending April 15th of the following year. The goal of the amendment is to provide social services districts with the flexibility to assist households during the current historic rise in energy costs. Districts would have the flexibility to provide utility arrears and to enter into new repayment agreements even though a prior such agreement has not been repaid or is not being repaid. The suspension of enforcement of the agreement during the period of cold weather would not end the obligation to repay but simply permit the district to meet a current utility emergency. The proposed amendment would better enable the districts to help protect the health and safety of households if they suffer utility shutoffs in the cold weather period as a result of the unprecedented high energy costs. The proposed regulations define the period of cold weather using the same time period as the Public Service Regulations at 16 NYCRR § 11.5(c)(2), which is part of the Home Energy Fair Practices Act and Energy Consumer Protection Act.

3. Professional services:

The proposed amendment would not require small businesses or local governments to hire additional professional services.

4. Compliance costs:

The fiscal impact of this regulatory change upon the social services districts which utilize this option is expected to be minimal. Pursuant to this amendment, the repayment of utility assistance could merely be delayed, and it is anticipated that payments of temporary housing assistance would decrease.

The proposed amendment would not require additional compliance costs for small businesses.

5. Economic and technological feasibility:

All small businesses and local governments have the economic and technological ability to comply with this proposed rule.

6. Minimizing adverse impact:

It is anticipated that the fiscal impact of this regulatory change would be minimal. This proposed amendment would allow the districts to meet the immediate energy needs of applicants this winter, during the period of cold weather from November 1st through April 15th.

There would be no adverse economic impact on small businesses.

7. Small business and local government participation:

Several local districts, Orange, Onondaga, Oneida, Suffolk, Schenectady, Cortland, Clinton, Essex, Hamilton, Montgomery, Saratoga, Warren, Washington, Delaware, Columbia, Ulster, Madison, Otsego, Seneca, Oswego, Jefferson and Wayne, were informed of the proposal, and no objections to the proposal were expressed.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendment would positively impact the 44 rural social services districts in the State.

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

No additional recordkeeping is required.

3. Costs:

The fiscal impact of this regulatory change upon the rural districts which utilize this option is expected to be minimal. Pursuant to this amendment, the repayment of utility assistance could merely be delayed, and it is anticipated that payments of temporary housing assistance would decrease.

4. Minimizing adverse impact:

The proposed amendment would be beneficial to social services districts in rural areas. This proposed amendment would allow the districts to meet the immediate energy needs of applicants this winter during the period of cold weather, defined as beginning November 1st of each year and ending April 15th of the following year.

5. Rural area participation:

This proposal was discussed at a meeting with Clinton, Essex, Hamilton, Montgomery, Saratoga, Warren and Washington counties with no objections noted. Additionally, this proposal was presented during a telephone conference with commissioners or their appointed representatives from Delaware, Columbia, Ulster, Madison, Otsego, Seneca, Oswego, Jefferson and Wayne with no comment offered in support or in opposition. In 2006, OTDA offered a similar emergency waiver option in response to rising natural gas prices. Twelve local social services districts elected to implement this waiver option. We believe that no comments were offered on this proposed regulatory change during the telephone conference because the local districts were familiar and comfortable with the proposal from this past offering. Additionally, local districts often ask NYS OTDA for greater flexibility in dealing with emergent needs and being more responsive to changing economic stresses on income. This change will give these districts another tool to help families in cold weather months.

Job Impact Statement

A Job Impact Statement is not required for the proposed amendment. It is apparent from the nature and the purpose of the proposed amendment that it would not have an adverse impact on jobs and employment opportunities. The proposed amendment would not affect in any real way the jobs of the workers in the social services districts.

Department of Transportation

NOTICE OF ADOPTION

Modification of the Warning Lamp Requirements for Non-divisible Load Permitted Vehicles

I.D. No. TRN-09-08-00003-A

Filing No. 1118

Filing Date: 2008-11-06

Effective Date: 2008-11-26

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

Action taken: Amendment of section 154-1.14 of Title 17 NYCRR.

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

Subject: Modification of the warning lamp requirements for non-divisible load permitted vehicles.

Purpose: To remove language requiring vehicle head lamps to be on during daylight operation, consistent with federal regulations.

Text or summary was published in the February 27, 2008 issue of the Register, I.D. No. TRN-09-08-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Allow Trailers to be Longer Than 48 Feet on Qualifying and Access Highways

I.D. No. TRN-48-08-00002-P

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

Proposed Action: This is a consensus rule making to amend section 154-2.4 of Title 17 NYCRR.

Statutory authority: Transportation Law, section 14, subd. (18); Vehicle and Traffic Law, section 385, subd. (3)(g)

Subject: Allow trailers to be longer than 48 feet on qualifying and access highways.

Purpose: To update the regulation to reflect the current standard.

Text of proposed rule: Section 1. Subdivisions (b), (f), (g), (h), (i) and (j) of Section 154-2.4 of Subpart 154-2 of Part 154 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended to read as follows:

(b) F2 Type 7. On all state highways, other than state highways in New York City, a permit may be issued for the operation of a vehicle, or combination of vehicles, which has at least six axles and whose wheelbase is not less than 36.5 feet. If the combination of vehicles consists of a power unit and a trailer, the [length of any trailer cannot exceed 48 feet] *trailer shall not exceed the legal length set forth in New York State Vehicle and Traffic Law section 385 subdivision (3)(e)*. The maximum gross weight of the vehicle shall not exceed 107,000 pounds, and it is subject to bridge restrictions. The maximum axle and grouping weights shall not exceed the following:

(1) the steering axle 22,400 pounds;
(2) any other single axle 25,000 pounds;
(3) any tandem-axle group 48,000 pounds;
(4) any tridem-axle group 58,000 pounds; and
(5) any quad-axle group 63,000 pounds.

(f) F5 Type 4. On State highways in the counties of Westchester, Rockland, Nassau, Suffolk, Putnam, Orange and Dutchess, a permit may be issued for the operation of a vehicle, or combination of vehicles, which has a minimum of five axles and a wheelbase of at least 30 feet. If the combination of vehicles consists of a power unit and a trailer, the [length of any trailer cannot exceed 48 feet] *trailer shall not exceed the legal length set forth in New York State Vehicle and Traffic Law section 385 subdivision (3)(e)*. The maximum gross weight shall not exceed 93,000 pounds, the total tandem axle weight shall not exceed 45,000 pounds, the total tridem axle group weight shall not exceed 57,000 pounds, the total quad axle group shall not exceed 62,000 pounds, the steering axle shall not exceed 22,400 pounds and any other single axle shall not exceed 22,500 pounds.

(g) Subdivision (g) is repealed.

(h) Subdivision (h) is repealed.

(i) F6 Type 6A. On State highways in the counties of Westchester, Rockland, Nassau, Suffolk, Putnam, Orange and Dutchess, a permit may be issued for the operation of a vehicle, or combination of vehicles, which have a minimum of six axles and a wheelbase of at least 36.5 feet. If the combination of vehicles consists of a power unit and a trailer, the [length of any trailer cannot exceed 48 feet] *trailer shall not exceed the legal length set forth in New York State Vehicle and Traffic Law section 385 subdivision (3)(e)*.

(1) For the period January 1, 1994 to December 31, 1994: the maximum gross weight shall not exceed 120,000 pounds, the steering axle shall not exceed 22,400 pounds; any other single axle shall not exceed 25,750 pounds; any tandem axle group shall not exceed 50,000 pounds; any tridem axle group shall not exceed 69,000 pounds; any quad axle group shall not exceed 69,000 pounds.

(2) After December 31, 1994: the maximum gross weight shall not exceed 120,000 pounds; the steering axle shall not exceed 22,400 pounds; any other single axle shall not exceed 25,700 pounds; any tandem axle group shall not exceed 50,000 pounds; any tridem axle group shall not exceed 67,000 pounds; any quad axle group shall not exceed 69,000 pounds.

(3) Effective January 1, 2004, permits issued pursuant to this paragraph shall be subject to the following limitations: the steering axle shall not exceed 22,400 pounds; any other single axle shall not exceed 25,700 pounds; any tandem axle group shall not exceed 48,000 pounds; any tridem axle group shall not exceed 63,000 pounds; any quad axle group shall not exceed 65,000 pounds.

(4) Any power unit acquired after April 1, 2004 must be less than 15 years old.

(5) After December 31, 2006, no new type 6a permit shall be issued, however, vehicles issued type 6A permits prior to that date may continue to receive renewals.

(j) F6 Type 6B. Effective January 1, 2004, on State highways in the Counties of Westchester, Rockland, Nassau, Suffolk, Putnam, Orange and Dutchess, a permit may be issued for up to a maximum of 120,000 pounds for the operation of a vehicle, or combination of vehicles, which have a minimum of seven axles and a wheelbase of at least 43 feet. The length of any trailer used in combination cannot exceed [48 feet] the *legal length set forth in New York State Vehicle and Traffic Law section 385 subdivision (3)(e)*. The steering axle shall not exceed 22,400 pounds; any other single axle shall not exceed 25,750 pounds; any tandem axle group shall not exceed 48,000 pounds; any tridem axle group shall not exceed 63,000 pounds; any quad axle group shall not exceed 65,000 pounds.

Text of proposed rule and any required statements and analyses may be obtained from: Kenneth Dodge, Director Office of Modal Safety and Security, NYS Department of Transportation, 50 Wolf Road, Albany, NY 12232, (518) 457-1795, email: kdodge@dot.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Transportation annually issues approximately 170,000 divisible load overweight permit certificates to over 5,000 customers with monthly revenues of approximately 1.1 million dollars. Since April 2006, The Department has been meeting with associations that represent the trucking industry, as well as holding a number of listening forums with customers twice a year, spring and fall in five (5) locations, in an attempt to identify areas of concern and needs.

One major area of concern and need was the ability of Divisible Load customers to use 53 foot trailers with their permitted power units. At the time the regulations and law for Divisible Load permits were written in the 1980's, the use of 53 foot trailers was not allowed in New York State and such trailers were not widely used by the trucking industry. Since then, the use of 53 foot trailers has increased significantly across the United States, New York and Canada, making it a necessity for the trucking industry to be able to use these trailers with their permitted power units. Currently the use of these trailers are limited by law to Qualifying and Access highways only, which are considered controlled highways,

and by design, have been engineered to handle bigger vehicles of both dimension and weight. The use of longer trailers is being requested for trailer fleet utilization purposes and is not intended to increase any of the existing permit classes for maximum gross, grouping or axle weights currently allowed.

The ability of customers to use 53 foot trailers has been requested by several industries; logging, fuel, bulk milk, and garbage. This modification would allow these carriers to load more products on fewer trailers, resulting in fewer trips by carriers with attendant benefits including lower fuel costs, less truck traffic and lowered truck emissions.

One of the Department's main goals in administering the permitting process is to protect the State's infrastructure; roads, pavements, and bridges. Experience indicates the longer the overall wheelbase of a vehicle and or combination of vehicles, the less damaging impacts these vehicles have on such infrastructure. Therefore, another beneficial impact of this proposed legislation will be protection of the State's infrastructure.

Based on the above information, the Department proposes that section 154-2.4, Subpart 154-2, Part 154 of Title 17 of the NYCRR, be amended to have specific trailer length limits removed and replaced with wording that would allow greater flexibility and utilization to current Divisible Load permit customers. These proposed changes would allow the Divisible Load permit program to recognize an industry standard that has been allowed in the Department's Special Hauling permit program for years.

Job Impact Statement

This proposed amendment to subdivisions (b), (f), (g), (h), (i) and (j) of section154-2.4, Subpart 154-2, Part 154 of Title 17 of the Official Compilation of Rules and Regulations of New York State will allow carriers to utilize 53 foot trailers on Qualifying and Access Highways by removing the current trailer length limit of 48 feet, which is specified in subdivisions (b), (f), (i) and (j) of section 154-2.4. The amendment will repeal subdivisions (g) and (h) of section 154-2.4, Subpart 154-2, Part 154 of Title 17 of the Official Compilation of Rules and Regulations of New York State, both of which expired on 12/31/1999. Through this amendment, the Department will offer greater flexibility to Divisible Load permit customers and meet the Department's goal of lessening the impact of heavy vehicles on roads and bridges by allowing a longer wheelbase for vehicles. Increasing the allowable trailer length will not negatively impact jobs and may open up other areas of opportunity for industry.