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.

Department of Audit and Control

NOTICE OF ADOPTION

The Requirement of Acknowledged Signatures for Unclaimed Fund Forms and Agreements Submitted to the Comptroller

I.D. No. AAC-27-08-00004-A
Filing No. 814
Filing Date: 2008-08-18
Effective Date: 2008-09-03

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

Action taken: Addition of section 129.1 to Title 2 NYCRR.

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

Subject: The requirement of acknowledged signatures for unclaimed fund forms and agreements submitted to the Comptroller.

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

Text of final rule: Part 129 is added to Title 2 of NYCRR as follows:

PART 129

Acknowledgment Requirements for Filing Abandoned Property Claims

Section 129.1 General Provisions.

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

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

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

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

Final rule as compared with last published rule: Nonsubstantial changes were made in section 129.1(a) and (b).

Text of rule and any required statements and analyses may be obtained from: Wendy H. Reeder, Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 474-5714, email: wreeder@osc.state.ny.us

Revised Regulatory Impact Statement

A Revised Regulatory Impact Statement is not attached because the changes to the rule are non-substantive in nature.

Revised Regulatory Flexibility Analysis

A Revised Regulatory Flexibility Analysis for Small Business and Local Governments is not attached because the changes to the rule are non-substantive in nature.

Revised Rural Area Flexibility Analysis

A Revised Rural Area Flexibility Analysis is not attached because the changes to the rule are non-substantive in nature.

Assessment of Public Comment

Most comments requested clarification as to how this rule differs from the Comptroller's Office of Unclaimed Funds' current practices. Prior to the adoption of this rule, the Comptroller had a longstanding policy of requiring that all abandoned property forms and finder agreements be notarized. This rule will formally adopt this requirement. In effect, this will institute prior procedures for the Office of Unclaimed Funds, claimants or finders by regulation. Other comments included concerns that this rule is not consistent with the Uniform Abandoned Property Act, that this regulation is contrary to law, and would and impose greater constraints on release of confidential information. First, the Uniform Abandoned Property Act has no bearing because New York has not adopted such law. Secondly, the regulation is consistent with the Abandoned Property Law because the law states that no confidential information may be released without first determining the claimant has an interest in the property. This rule sets a minimum standard for disclosure, while recognizing that, due to other indicia of ownership provided by the claimant or finder, the notarization may not be required to prove an interest in the property and therefore such requirement may be waived. Finally, the rule will not impose any greater obstacle to the recovery of abandoned funds. As stated above, this rule merely formalizes the Office of Unclaimed Funds' longstanding procedures. No other alternatives were offered via the comments and no other alternatives have been explored because this rule is consistent with New York law and sets a minimum standard with which all persons can readily comply.

Department of Correctional Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Coxsackie Correctional Facility

I.D. No. COR-36-08-00004-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 section 100.45(c) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Coxsackie Correctional Facility.

Purpose: Removing a designated function as listed in the regulation since the facility no longer provides that function.

Text of proposed rule: The Department of Correctional Services proposes to amend section 100.45(c) of 7 NYCRR as follows:

§ 100.45(c) Coxsackie Correctional Facility shall be classified as a maximum security correctional facility, to be used for the following functions:

(1) general confinement facility.[; and]

[(2) detention center.]

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, New York State Department of Correctional Services, 1220 Washington Avenue - Building 2, State Campus, Albany, NY 12226-2050, (518) 457-4951, email: AJAnnucci@DOCS.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to this proposed rule change. As authorized by Correction Law section 70, the Commissioner has determined that Coxsackie correctional Facility will no longer serve the function of a Detention Center. Therefore it is necessary to remove this category from 7NYCRR 100.45(c).

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Introduction of Evidence by an Applicant Seeking Restoration of His/Her Professional License

I.D. No. EDU-36-08-00005-P

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

Proposed Action: Amendment of section 24.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 6506(1), 6511

Subject: Introduction of evidence by an applicant seeking restoration of his/her professional license.

Purpose: To prohibit new evidence from being included in a response to the report and recommendation of the Committee on the Professions.

Text of proposed rule: Subparagraph (i) of paragraph (2) of subdivision (a) of section 24.7 of the Rules of the Board of Regents is amended, effective December 11, 2008, as follows:

(i) [Materials submitted in] *An applicant may submit a* response to the Committee on the Professions' recommendation to the Board of Regents*, provided that such response does not contain any new evidentiary material. Any response filed under this subparagraph* shall be filed no later than 15 days following the postmarked date of the written notification of the decision or recommendation of the Committee on the Professions.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa Struffolino, State Education Department, Office of Counsel, State Education Building, Room 148, Albany, New York 12234, (518) 473-4921, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Associate Commissioner, State Education Department, Office of Professions, State Education Building, 2nd Floor, West Wing, Albany, New York 12234, (518) 474-3862, email: opopr@mail.nysed.gov

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.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to the practice of the professions and to promulgate rules to carry out such supervision.

Section 6511 of the Education Law grants the Board of Regents the authority to restore a professional license which has been previously revoked.

2. Legislative Objectives:

The proposed amendment carries out the intent of the aforementioned statutes by establishing evidentiary guidelines regarding the evidence presented to the Board of Regents by an applicant for restoration of a professional license.

3. Needs and Benefits:

The purpose of the proposed amendment is to specify that an applicant's response to the report and recommendation made by the Committee on the Professions (COP) may not include new evidentiary material. Evidentiary materials submitted at this stage of the proceeding have not been subject to the authentication processes available in earlier stages of the proceeding. The proposed amendment would provide a more orderly and effective review of evidentiary information submitted in support of a restoration application.

4. Costs:

(a) Costs to State Government: None. By making the restoration process more efficient, the proposed amendment may result in a more expedited and less costly process.

(b) Costs to Local Government: None. This amendment will not impose additional costs on local government.

(c) Costs to Private Regulated Parties: None.

(d) Cost 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 and may result in a less costly process.

5. Paperwork:

None.

6. Local Government Mandates:

None. The amendment does not impose any program, service, duty, requirement, or responsibility upon local governments.

7. Duplication:

None. There are no other State or Federal requirements on the subject matter of this amendment. Therefore, the amendment does not duplicate other existing State or Federal requirements.

8. Alternative Approaches:

None. There are no viable alternatives to the proposed amendment, and none were considered.

9. Federal Standards:

None. There are no Federal standards concerning the subject matter of this amendment.

10. Compliance Schedule:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to specify that new evidence may not be included in a response to the report and recommendation of the Committee on the Professions, in order to provide a more orderly and effective review of evidentiary information submitted in support of a restoration application. This amendment will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Because it is evident from the nature of the proposed amendment that it will have no adverse economic impact or reporting, recordkeeping or other

compliance requirements on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one was not prepared.

Rural Area Flexibility Analysis

The purpose of the proposed amendment is to specify that new evidence may not be included in a response to the report and recommendation of the Committee on the Professions, in order to provide a more orderly and effective review of evidentiary information submitted in support of a restoration application. This amendment clarifies existing procedures and will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Because it is evident from the nature of the proposed amendment that it will have no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one was not prepared.

Job Impact Statement

The purpose of the proposed amendment is to specify that new evidence may not be included in a response to the report and recommendation of the Committee on the Professions, in order to provide a more orderly and effective review of evidentiary information submitted in support of a restoration application. This regulatory change will have no effect on the employment opportunities in the field of the applicant or any other field.

Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Excelsior Scholars Program

I.D. No. EDU-36-08-00007-P

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

Proposed Action: Amendment of section 100.14 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2) and 3641-a(1), (2) and (3)

Subject: Excelsior Scholars Program.

Purpose: To clarify procedures for nomination of eligible students by the superintendent.

Text of proposed rule: Subdivision (c) of section 100.14 of the Regulations of the Commissioner of Education is amended, effective December 11, 2008, as follows:

(c) The superintendent may nominate up to 10 percent of a school's eligible grade seven students to participate in the programs described in this section*; provided that in school districts that have fewer than 10 eligible students, the superintendent may nominate one such student.* The superintendent shall nominate equal numbers of male and female students, as practicable.

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner P-16, State Education Department, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234, (518) 474-3862, email: p16education@mail.nysed.gov

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.

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 215 authorizes the Board of Regents, the Commissioner or their representatives to visit, examine, and inspect schools or other educational institutions, and require and verify reports from those entities.

Education Law 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 3641-a, as added by Chapter 57 of the Laws of 2007, provides that the Commissioner shall establish an Excelsior Scholars program for grade seven mathematics and science students, and award grants on a competitive basis to public and independent colleges and universities to conduct summer programs providing advanced coursework in mathematics and science to students designated as Excelsior Scholars. The statute requires the Commissioner to prescribe by regulation the maximum number of students that may be nominated by each school, which shall include equal numbers of male and female students. The statute also provides that the Commissioner's regulations shall provide for coordination of the program with the centers for excellence in technology and the programs offered by such centers, to the extent practicable.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority of the Commissioner to establish criteria for the award of grants for the Excelsior Scholars program for high performing students in mathematics and science who have completed seventh grade.

NEEDS AND BENEFITS:

The proposed amendment is necessary to clarify procedures for the nomination of eligible students by school district superintendents to participate in the Excelsior Scholars program pursuant to Education Law section 3641-a.

The Excelsior Scholars program provides for the awarding of grants on a competitive basis to public and independent colleges and universities to conduct summer programs providing advanced coursework in mathematics and science to high performing students in mathematics and science who have completed seventh grade students, and who are designated as excelsior scholars. Superintendents are responsible for nominating students to participate in the summer programs.

Subdivision (c) of section 100.14 provides that the superintendent may nominate up to 10 percent of a school's eligible grade seven students to participate in the programs. However, in some districts there may be fewer than 10 eligible students. As such, nominating one student would be nominating greater than 10 percent of the eligible students. An amendment is necessary to clarify the nominating process to provide that in instances where a school district has fewer than 10 eligible students, the superintendent may nominate one such student.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. Participation in the Excelsior Scholars program is voluntary.

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program and does not impose any additional program, service, duty or responsibility on school districts or local governments. Participation in the Excelsior Scholars program is voluntary.

PAPERWORK:

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program and does not impose any additional paperwork or reporting requirements.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program, in instances where a school district has fewer than 10 eligible students and the

nomination of even one student would result in a nomination beyond the 10 percent limit established in subdivision (c) of section 100.14. The proposed amendment provides that in such instances, the superintendent may nominate one student.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties may achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment relates to procedures for the nomination of eligible students to participate in the Excelsior Scholars program pursuant to Education Law section 3641-a, and will not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small business, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local government:

EFFECT OF RULE:

The proposed amendment applies to all public school districts within the state who choose to partner with public and independent colleges and universities for purposes of conducting an Excelsior Scholars program pursuant to Education Law section 3641-a.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program, in instances where a school district has fewer than 10 eligible students and the nomination of even one student would result in a nomination beyond the 10 percent limit established in subdivision (c) of section 100.14. The proposed amendment provides that in such instances, the superintendent may nominate one student. The proposed amendment does not impose any additional compliance requirements on school districts or local governments. Participation in the Excelsior Scholars program is voluntary.

PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional services requirements on school districts.

COMPLIANCE COSTS:

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program and does not impose any additional costs on school districts. Participation in the Excelsior Scholars program is voluntary.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose new technological requirements or costs on school districts.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program, in instances where a school district has fewer than 10 eligible students and the nomination of even one student would result in a nomination beyond the 10 percent limit established in subdivision (c) of section 100.14. The proposed amendment provides that in such instances, the superintendent may nominate one student. The proposed amendment does not impose any additional reporting, record keeping or other compliance requirements or costs on school districts. Participation in the Excelsior Scholars program is voluntary.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all public school districts and public and independent colleges and universities within the State who choose to participate in an Excelsior Scholars program pursuant to Education Law section 3641-a, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program, in instances where a school district has fewer than 10 eligible students and the nomination of even one student would result in a nomination beyond the 10 percent limit established in subdivision (c) of section 100.14. The proposed amendment provides that in such instances, the superintendent may nominate one student. The proposed amendment does not impose any additional compliance requirements on school districts or local governments. Participation in the Excelsior Scholars program is voluntary. The proposed amendment imposes no additional professional services requirements on school districts.

COMPLIANCE COSTS:

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program and does not impose any additional costs. Participation in the Excelsior Scholars program is voluntary.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify procedures for nomination of eligible students to participate in the Excelsior Scholars program, in instances where a school district has fewer than 10 eligible students and the nomination of even one student would result in a nomination beyond the 10 percent limit established in subdivision (c) of section 100.14. The proposed amendment provides that in such instances, the superintendent may nominate one student. The proposed amendment does not impose any additional reporting, record keeping or other compliance requirements or costs on school districts. Participation in the Excelsior Scholars program is voluntary.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to procedures for the nomination of eligible students to participate in the Excelsior Scholars program pursuant to Education Law section 3641-a, and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed rule that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-36-08-00006-E

Filing No. 815

Filing Date: 2008-08-18

Effective Date: 2008-08-18

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

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

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

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

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

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

Subject: Criminal History Record Check.

Purpose: Criminal background checks of certain prospective employees of NHs, CHHAs, LHCSAs & long term home health care programs.

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 15, 2008.

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

Regulatory Impact Statement

Statutory Authority:

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

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

COSTS:

Costs to State Government:

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

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

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

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

Costs to Local Governments:

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

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

Costs to Private Regulated Parties:

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

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

Costs to the Department of Health:

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

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Paperwork:

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

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Small Business Guide:

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

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

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

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

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

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

Economic and Technological Feasibility:

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

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

Minimizing Adverse Impact:

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

Small Businesses and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect of Rule:

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

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

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

Albany	Erie	Oneida

Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

Job Impact Statement

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Practice of Radiologic Technology

I.D. No. HLT-36-08-00023-P

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

Proposed Action: Repeal of Part 89 and addition of new Part 89 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 3504

Subject: Practice of Radiologic Technology.

Purpose: Amendment updates the regulation to reflect the current practice of radiologic technology and the administration of the program by Department of Health.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): Part 89 of Title 10 of the New York Codes Rules and Regulations (NYCRR) governs the practice of x-ray technology and delineates how radiologic technologists are to be trained, examined and licensed. Much of the existing Part 89 was promulgated pursuant to the enactment of Article 35 of the Public Health Law in 1965. In 2006, a law was passed that repealed Article 35 and replaced it with a new Article 35 that now governs the practice of radiologic technology. As a result, the language in the existing regulation is outdated and does not accurately reflect how the technologists are currently examined and licensed by the department. Therefore, a new Part 89 is proposed to implement the 2006 law. The proposed regulation contains the following provisions:

Section 89.0 states that the purpose of Part 89 is to define legal requirements relating to the practice of radiologic technology.

Section 89.1 covers the definitions of terms used in this Part. Several new definitions have been added including accrediting organization, authorized person, direct supervision, personal supervision, sponsoring institution, supervision and authorized user. The definitions of applicable regulations, negligence and/or incompetence and unethical conduct have been updated.

Section 89.2 updates the scope of practice of radiographers and radiation therapists and defines the scope of practice of nuclear medicine technologists. After December 31, 2008 only licensed persons can practice nuclear medicine technology.

Section 89.3 describes the registration process for educational programs in radiologic technology.

Section 89.4 covers the standards that an educational program must follow.

Section 89.5 itemizes the regulations that relate to students enrolled in a course of study in radiologic technology. Students in the last six months of training may be assigned up to a total of 80 hours of clinical practice on evenings, weekends or holidays.

Section 89.10 describes the radiologic technologist licensing process. The new fee for a lifetime license is $120. This section also addresses individuals practicing nuclear medicine technology prior to July 26, 2006.

Section 89.11 provides information on the recourse for individuals who have been disqualified for a license by the department.

Section 89.20 describes the registration process for radiologic technology licensure and continuing education requirements beginning January 1, 2010. The Section also contains a registration fee increase from $15 per year to $20 per year and an extension of the registration period from two years to four years.

Section 89.21 covers the issuance of temporary permits to practice radiologic technology.

Section 89.30 describes exemptions to Article 35 for dental assistants and persons authorized to provide supporting service to a licensed podiatrist.

Section 89.40 describes the qualifications and certification process required for radiologic technologists to administer intravascular contrast media.

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

Sections 3504 and 3507(2) of the Public Health Law (PHL) authorizes the Commissioner of Health to make rules and regulations to carry out the provisions of Article 35 of the Public Health Law that govern the practice of radiologic technology. Section 3504 also requires that the Commissioner, when promulgating regulations, act on the advice of the Radiologic Technology Advisory Board mandated in Section 3503. Subdivision 4 of section 3502 of the PHL authorizes the department to promulgate regulations relating to the administration of intravenous contrast media by radiographers. PHL section 3508 requires institutions offering a course of study in radiologic technology to register with Department of Health. PHL section 3510(1)(g) authorizes the Commissioner to promulgate regulations that define ''unethical conduct.'' PHL section 3507(7) also authorizes the Commissioner to promulgate regulations relating to continuing education. These amended regulations include the Board's advice, which was obtained through a meeting of a quorum of the Board and through written correspondence with all the Board members.

Legislative Objectives

Enacted as Chapter 175 of the Laws of 2006, Article 35 of the PHL updates the educational and licensure requirements for radiologic technologists. In addition, the 2006 law creates a new licensed profession, nuclear medicine technology, and allows radiographers to administer contrasts media intravenously. The Department is responding to this legislative objective in revising this regulation.

Needs and Benefits

Much of the existing 10 NYCRR Part 89 was promulgated pursuant to the enactment of PHL Article 35 in 1965, which is now repealed. Since 1965, the practice of radiologic technology has changed drastically as well as educational standards for radiologic technologists. Consequently, Part 89 must be revised to implement PHL Article 35 that is currently in effect, and to more accurately reflect how these professions should be regulated.

The most significant change in the 2006 law is the addition of a new licensed profession, nuclear medicine technology. In 1979 individuals with the required education or certification were authorized to inject radiopharmaceuticals under 10 NYCRR Part 16. For many years, almost all nuclear medicine studies were performed in hospital settings where the individuals performing the studies were credentialed by the facility under the requirements of Part 405 of the State Hospital Code. This level of oversight, in addition to periodic inspections by New York State and New York City staff, provided the department with reasonable assurance that nuclear medicine studies were being performed by trained and competent individuals. More recently, many nuclear medicine studies have been performed in private imaging centers and cardiology practices with much less oversight by the department. This trend, combined with equipment safety concerns, ever-increasing complexity of nuclear medicine studies, and the appreciation that nuclear medicine technology should be acknowledged as part of radiologic technology profession made licensing nuclear medicine technologists important.

PET/CT imaging is the merger of a nuclear medicine study (positron emission tomography or PET) and another imaging study such as an x-ray study (computed tomography or CT). The information generated provides the physician with a more complete picture of the functioning (from the PET study) and structure (from the CT study) of the human body than either test alone. A PET/CT scanner is a type of nuclear medicine equipment and a PET/CT study is performed by a nuclear medicine technologist who has additional training in the use of the CT equipment. The statute, and therefore the regulations do not authorize nuclear medicine technologists to use x-rays except as an integral part of a merged imaging procedure that includes the use of a nuclear medicine study.

The 2006 law and these regulations allow radiographers with additional education and certification to administer contrast media intravenously. The department will ensure that the education, training and experience criteria are based on national standards and were established to assure that licensees are competent to perform this function.

Costs

Cost to State and Local Government:

There are no costs to State and Local Government.

Costs to the Department of Health:

Licensing for nuclear medicine technologists.

The Department's Bureau of Environmental Radiation Protection estimates that 2300 individuals may apply for a nuclear medicine technologist license statewide. The department expects that it will take 10 minutes (.167 hr.) to approve a typical application for licensure, enter the data and generate and mail the license. Using 2007/2008 salary, fringe benefit and indirect cost rates:

Grade 9

Salary	$37,471 (as of April 1, 2008)
Fringe benefits (.4696)	$17,596
Indirect costs (.202)	$11,124
Total	$66,191
Cost/hour (1950 hr/year)	$33.94

Total Grade 9 personnel service costs:

2300 applicants x.167 hr = 384 hours x $33.94 = $13,033

The department expects that approximately 150 (10%) applicants will be apply under the law's grandfather provisions. These submissions will require more extensive review (average 30 minutes) by a Radiological Health Specialist.

Grade 23

Salary	$76,100
Fringe benfits (.4696)	$35,737
Indirect costs (.202)	$22,591
Total	$134,428
Cost/hr (1950 hr/yr)	$68.94

Total grade 23 personnel services costs:

150 applicants x.5 hr = 75 hours x $68.94 = $5,171

Total Costs:

Personnel services costs	$18,204
Mailing costs	$1,500
Supplies (certificate paper, etc.)	$300
Total Costs	$20,004

These costs of licensing of individuals will be offset by the $120 one time licensing fee (2300 applicants x $120 = $276,000). Once individuals are licensed, they become part of an existing program that registers radiologic technologists, investigates complaints of unprofessional conduct by technologists and disciplines technologists as necessary.

Contrast Media Injection Certification

The Department began issuing certificates to radiologic technologists on January 22, 2007. The review of credentials, data entry and certificate generation takes about 10 minutes. Recertification will occur at the time of license registration. There are currently over 16,000 registered radiographers, and it is estimated that 2000 will apply for a certificate.

Grade 9

Salary	$37,471
Fringe benefits (.4696)	$17,596
Indirect costs (.202)	$11,124
Total	$66,191
Cost/hour (1950 hr/year)	$33.94

2000 applicants x.167 hr = 334 hours x $33.94 = $11,336

Personnel services costs	$11,336
Mailing costs	$1,300
Supplies (certificate paper, etc)	$350
Total Costs	$12,986

The $20 certification fee will offset these costs for 2000 applicants equaling $40,000.

Cost to Private Regulated Parties:

Nuclear medicine technologist licensing. The Bureau estimates that there are about 2300 individuals currently providing nuclear medicine technology services in New York State. Most (90%) individuals are currently certified in this practice by either the Nuclear Medicine Technology Certifying Board or the American Registry of Radiologic Technology. The other 10% have varying credentials and may qualify under the grandfather provisions in the law. All must be licensed by January 1, 2009 to continue to practice nuclear medicine technology. There is a one-time $120 licensing fee and a $20 per year registration fee.

Intravenous Contrast Administration Certificate. There are about 850 facilities in New York State (243 hospitals and about 600 imaging centers and private practices) that perform diagnostic x-ray studies requiring contrast media. Using certified radiologic technologists to perform this function is voluntary and facilities may choose to continue to use other qualified individuals to perform injections.

To qualify for intravenous contrast administration certification a radiographer must complete training in the injection procedure and recognition of adverse reactions, and cardiopulmonary resuscitation. Many hospitals currently require radiologic technologists to be certified in cardiopulmonary resuscitation.

Training in the injection procedure and related information should require about eight (8) hours of didactic and practical preparation. Radiologic technologists who specialize in computed tomography (CT) procedures earn about $29/hr and could earn approximately $232 to teach the course. The cost to radiographers who take the course ranges from free to $75. Some employers may offer such education free of charge. Cardiopulmonary resuscitation training is approximately eight (8) hours. Periodic recertification is four (4) hours in duration. The cost of the cardiopulmonary resuscitation course from the American Red Cross is $90.

Beginning in 2010 radiologic technologists will need to earn 12 continuing education (CE) credits for each year of their registration period in order to renew the registration of their license. The CE credits earned must

be Category A credits as designated by the American Society of Radiologic Technologists. The cost of obtaining the CE credits will depend on the number credits offered by the course. There are on-line courses that offer one or two CE credits at no cost. Other on-line courses cost from $25 to $100. Seminars consisting of two to seven days of lectures and demonstrations will cost $200 to $1000.

Local Government Mandates

This regulation does not mandate any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district.

Paperwork

Individuals interested in being licensed in nuclear medicine technology must present their credentials to the department for approval. Radiologic technologists who want to be authorized to inject intravenous contrast material must apply and obtain a certificate from the department. Once the licensee has received his/her first intravenous contrast administration certificate, subsequent certificate applications will be linked to the registration process. All radiologic technologists must register their licenses every four years.

Duplication

This regulation does not duplicate any other State or Federal law or regulation.

Alternatives

There are no other acceptable alternatives to this proposal. The PHL requires a licensing and registration program for radiologic technologists. The PHL authorizes the commissioner of health to make any regulations necessary to conduct the licensing program.

Federal Requirements

This regulatory amendment does not exceed any minimum standards of the Federal government.

Compliance Schedule

The proposed rule change will become effective upon publication of a Notice of Adoption in the *State Register*. The requirement for a license to practice nuclear medicine technology is effective January 1, 2009. Individuals have until that date to submit their credentials for licensing.

Regulatory Flexibility Analysis

Effect on Small Business

There are about 750 hospitals, imaging centers and private medical practices licensed to use radiopharmaceuticals in New York State. These facilities use nuclear medicine technologists to perform diagnostic medical tests. From past inspection experience, it is believed that the vast majority of individuals performing these functions are certified in this practice by the Nuclear Medicine Technology Certification Board or the American Registry of Radiologic Technologists in Nuclear Medicine Technology. Any individual who does not have one of these credentials has until January 1, 2009 to obtain the national certification or to apply to the department under the grandfather provisions in the law. After that date, only persons licensed by the department may practice nuclear medicine technology in this state.

There are about 545 hospitals, imaging centers and private practices that perform diagnostic x-ray studies requiring contrast media. These health care providers may employ radiologic technologists certified to administer contrast media or may choose to continue to use other qualified individuals to administer contrast media. Radiologic technologists seeking to be certified to administer contract media intravenously must complete training covering the injection procedure and recognition of adverse reactions and training in cardiopulmonary resuscitation.

It is expected that training in the injection procedure and related information will require eight (8) hours of didactic and practical preparation. Radiologic technologists who specialize in computed tomography (CT) procedures make on average $58,000 a year or about $29/hr. The cost of staff salaries for training each technologist is about $232.

For those licensed radiologic technologists that are not certified in cardiopulmonary resuscitation, initial training is approximately eight (8) hours or $232 in salary costs per individual. Periodic recertification is four (4) hours in duration and $116 in salary cost.

Facilities may experience a cost and efficiency saving following radiologic technologist certification due to improved patient flow.

Compliance Requirements and Recordkeeping

Beginning January 1, 2009, each facility must assure that only licensed individuals perform functions defined under the practice of nuclear medicine technology. As of January 22, 2007, facilities must document and may use registered radiographers to inject contrast media if the radiographers have received an intravenous contrast administration certificate.

Professional Services

Facilities will not require any additional professional services as a result of this amendment.

Capital Costs and Annual Costs of Compliance

There are no capital costs associated with this regulation. The licensing of nuclear medicine technologists and the certification of radiographers in injection of contrast media are responsibilities of the licensed persons. Facilities may or may not choose to provide financial assistance to these employees.

Economic/Technological Feasibility

This regulation poses no economic or technological burden to the regulated parties except documentation of appropriate licensing/certification.

Minimizing Adverse Impact

The law requires that an individual practicing as a nuclear medicine technologist be licensed to do so by January 1, 2009. The law also provides an alternative pathway to license individuals who are experienced and competent in this field.

The department is encouraging schools of radiologic technology and professional societies to provide training to radiographers in the injection of contrast media.

Small Business and Local Government Participation

The Department solicited comments from the Department's Radiologic Technology Advisory Board, the New York State Society of Radiological Sciences, the Association of Educators of Radiologic Technology in New York State, the New York State Radiological Society, and the New York State Nurses Association (NYSNA) with regard to these regulations. These organizations have members that represent small businesses. All of the organizations were in support of the licensing of nuclear medicine technologists. All of the organizations that submitted written comments indicated their support for the revised regulations, in general, except NYSNA. NYSNA was concerned about intravenous contrast administration by radiographers. This proposed regulation includes amendments/revisions that reflect the comments received. NYSNA offered three suggestions for clarification of code provisions related to the injection of contrast media. A revision was made to address one of the three comments by directly adopting the language from Article 35 of the Public Health Law for the definition of the direct supervision of radiologic technologists during contrast injections as was suggested by the NYSNA. A comment about the limitations placed on radiologic technologists during contrast injections is substantially addressed in Part 89 without using language identical to that in Article 35 as suggested by NYSNA. A NYSNA concern about assessing the status of the patient prior to a contrast injection has been substantially addressed in Part 89 without adopting the Article 35 language as suggested by NYSNA.

Rural Area Flexibility Analysis

Effect on Rural Area

There are about 100 facilities located in rural areas that are licensed to use radiopharmaceuticals. From past inspection experience, it is believed that the vast majority of individuals performing nuclear medicine technology functions are certified in this practice by the Nuclear Medicine Technology Certification Board or the American Registry of Radiologic Technologists. Any individual who does not have one of these credentials has until January 1, 2009 to obtain the national certification or to apply to the department under the grandfather provisions in the law. After that date, only licensed persons may practice nuclear medicine technology.

There are also approximately 150 facilities in rural areas that provide diagnostic x-ray studies that include contrast media injections. The passage of this amendment will improve their ability to provide service to their patients. Adding radiologic technologists to the classes of health care providers who can inject contrast media will help reduce patient waiting times, delays in test interpretations and free up nurses and physicians for other duties. However, using certified radiologic technologists for this function is voluntary and facilities may choose to continue to use other qualified individuals to perform injections.

Compliance Requirements

Beginning January 1, 2009, each facility must assure that only licensed individuals perform the functions defined under the practice of nuclear medicine technology. As of January 22, 2007, facilities may use registered radiographers to inject contrast media if the radiographers have received an intravenous contrast administration certificate.

Professional Services

Facilities will not require additional professional services as a result of this amendment.

Capital Costs and Annual Costs of Compliance

There are no capital costs associated with this regulation. The licensing of nuclear medicine technologists and the certification of radiographers in intravenous contrast administration are the responsibilities of the licensed persons. Facilities may or may not choose to provide financial assistance to these employees.

Minimizing Adverse Impact

The law requires that an individual practicing as a nuclear medicine technologist be licensed to do so by January 1, 2009. The Department is encouraging schools of radiologic technology and professional societies to provide training in the administration of contrast media at a reasonable cost.

Rural Area Participation

The Department solicited comments from the Department's Radiologic Technology Advisory Board, the New York State Society of Radiological Sciences, the Association of Educators of Radiologic Technology in New York State, the New York State Radiological Society, and the New York State Nurses Association (NYSNA) with regard to these regulatory changes. These organizations have members that represent or are small businesses. All of the organizations were in support of the licensing of nuclear medicine technologists. In general, organizations that submitted written comments indicated their support for the revised regulations. The NYSNA had concerns about intravenous contrast administration by radiographers. NYSNA offered three suggestions for clarification of code provisions related to the injection of contrast media. The department accepted NYSNA's proposal to include in the regulation the language from Article 35 for the definition of the direct supervision of radiologic technologists during contrast injections. NYSNA's two other proposals relating to administration of intravenous contrast media were considered but rejected. The department felt that its regulatory provisions relating to contract media were adequate.

Job Impact Statement

Nature of Impact and Categories and Numbers Affected

All individuals who are performing the functions of a nuclear medicine technologist need to be licensed as of January 1, 2009. About 90% of these professionals are currently certified by a national certifying body and thereby qualify for a license. The other 10% are expected to qualify under the alternate pathway provided in the law. Individuals will need to pay a one-time license fee of $120 and an annual registration fee of $20.

PET/CT imaging is an emerging technology that combines information from a nuclear medicine study (positron emission tomography or PET) and an x-ray study (computed tomography or CT) to help diagnose patient illness. Because a PET/CT scan requires the use of radioactive materials, the department believes that the scanner is a type of nuclear medicine equipment and that a PET/CT study needs to be performed by a nuclear medicine technologist who has additional training in the use of the CT equipment. This means that only individuals licensed as nuclear medicine technologists may perform PET/CT scans. Nuclear medicine technologists may not perform CT scans in any other context.

This amendment adds the intravenous administration of contrast material as an integral part of a radiographic examination, to the definition of radiography. As such it updates New York State regulations to mirror national standards and aligns radiographers in this state with their national counterparts.

In facilities that employ radiographers who administer contrast intravenously, there will probably be a shift in responsibilities for the current staff in radiology services. The physician, physician assistant or nurse who previously performed this task will now be available to fulfill other medical and nursing duties. Considering the serious shortage of all these classes of practitioners, the efficiencies this change will provide is expected to improve patient care during diagnostic studies requiring contrast media. However, using certified radiologic technologists for this function is voluntary and facilities may choose to continue to use other qualified individuals to perform injections.

Adverse Impact

The nuclear medicine community has expressed its desire for licensing of nuclear medicine technologists for several decades. About 90% of the individuals performing nuclear medicine studies are already certified by the Nuclear Medicine Technology Certifying Board or the American Registry of Radiologic Technologists in Nuclear Medicine Technology and thereby qualify for a license. The grandfather provisions of the law were included to protect current individuals with experience and competence to qualify for a license.

The national professional organization for radiologic technologists is the American Society of Radiologic Technologists. This Society has included injection of contrast media as part of the practice of radiologic technology since 1991. This new regulation provides facilities with more options in performing studies using contrast material and aligns the profession in this state with the national radiologic technology community.

The Department solicited comments from the Department's Radiologic Technology Advisory Board, the New York State Society of Radiological Sciences, the Association of Educators of Radiologic Technology in New York State, the New York State Radiological Society, and the New York State Nurses Association (NYSNA) with regard to these regulations. These organizations have members that represent small businesses. All of the organizations were in support of the licensing of nuclear medicine technologists. All of the organizations that submitted written comments indicated their support for the revised regulations, in general, except NYSNA. NYSNA was concerned about intravenous contrast administration by radiographers. This proposed regulation includes amendments/revisions that reflect the comments received. NYSNA offered three suggestions for clarification of code provisions related to the injection of contrast media. A revision was made to address one of the three comments by directly adopting the language from Article 35 of the Public Health Law for the definition of the direct supervision of radiologic technologists during contrast injections as was suggested by the NYSNA. A comment about the limitations placed on radiologic technologists during contrast injections is substantially addressed in Part 89 without using language identical to that in Article 35 as suggested by NYSNA. A NYSNA concern about assessing the status of the patient prior to a contrast injection has been substantially addressed in Part 89 without adopting the Article 35 language as suggested by NYSNA.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

APGs Outpatient Reimbursement Methodology

I.D. No. HLT-36-08-00033-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 86-8 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)

Subject: APGs Outpatient Reimbursement Methodology.

Purpose: Provides a new more cost effective payment methodology based on service intensity.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us/regulations): General Summary for 86-8.1 through 86-8.12

The amendments to Part 86 adding sections 86-8.1 through 86-8.12 of Title 10 (Health) NYCCR are required to implement a new payment methodology for certain ambulatory care fee-for-service (FFS) Medicaid services based on Ambulatory Patient Groups (APGs). APGs group together procedures and medical visits that share similar characteristics

and resource utilization patterns so as to pay for services based on relative intensity.

86-8.1 – Scope of services and effective dates

The proposed addition of section 86-8.1 of Title 10 (Health) NYCCR defines the categories of facilities subject to APGs and the time frames for implementation.

Outpatient services and ambulatory surgery services provided by general hospitals will be subject to the new payment methodology on and after December 1, 2008. Emergency department services provided by general hospitals will be subject to the new payment methodology on and after January 1, 2009. Ambulatory services provided by diagnostic and treatment centers and free-standing ambulatory surgery center services will be subject to the new payment methodology on and after March 1, 2009. However, this new payment methodology does not apply to: Federally Qualified Health Centers except when they voluntarily agree to participate; services which are not provided pursuant to a facility's licensure under article 28 of the public health law; payments on behalf of Medicaid managed care and family health plus enrollees; and facilities located outside New York State.

86-8.2 – Definitions

The proposed addition of section 86-8.2 of Title 10 (Health) NYCCR provides definitions for the following components of the new reimbursement methodology: Ambulatory Patient Group (APG); Allowed APG weight; APG relative weight; Base rate; Consolidation; Current Procedure Terminology, fourth edition (CPT-4); Discounting; APG software system; Final APG weight; International Classification of Diseases, 9th Revision (ICD-9); Packaging; Downstate region; Upstate region; Significant procedure APG; Medical visit APG; Visit; Peer Group; Ambulatory surgery permissible procedures; Ancillary services, and Case mix index.

86-8.3 Record keeping, reports and audits

The proposed addition of section 86-8.3 of Title 10 (Health) NYCCR requires general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers which are governed by this Subpart will continue to maintain financial and statistical data and records in accordance with regulations as set forth in Subpart 86-1 and 86-4 of this Part, as applicable. Affected providers will continue to submit cost reports, and make records and books available to the Department for audit.

86-8.4 Capital cost reimbursement

The proposed addition of section 86-8.4 of Title 10 (Health) NYCCR requires that a capital cost component be added to Medicaid payments. The computation of the capital cost component of payments for general hospital outpatient and emergency services and diagnostic and treatment center services shall remain subject to otherwise applicable statutory provisions. The computation of the capital cost component of payments for ambulatory surgery services provided by hospital-based and free-standing ambulatory surgery centers shall be the result of dividing the total capital cost reimbursement paid to each such facilities for the 2005 calendar year (CY) for upstate region and downstate region, respectively, and then dividing each regional amount by the total number of claims paid within each such region for the 2005 CY.

86-8.5 Administrative rate appeals

The proposed addition of section 86-8.5 of Title 10 (Health) NYCCR requires that administrative rate appeals of rates of payment must be submitted to the Department in writing within 120 days of the date such rates are published by the Department to the facility. Each rate appeal submitted to the Department must set forth the basis for the appeal and must be accompanied by relevant documentation. The Department will respond by affirming the original rates, revising the rates or requesting additional information. Failure of a provider to respond to the Department's request for additional information within 30 days will constitute a withdrawal of the appeal unless the Department grants an extension.

The Department's written response to a facility's rate appeal will be considered final unless a written request for further consideration is submitted within 30 days of the ruling, provided, however, that the Department's denial of an appeal on the grounds that it constitutes a challenge to the rate-setting methodology shall be considered final and there shall be no further administrative review available. Otherwise, the Department will respond in writing to the request for further consideration of the appeal and either affirm or revise its original rate appeal determination.

86-8.6 - Rates for new facilities during the transition period

The proposed addition of section 86-8.6 of Title 10 (Health) NYCCR stipulates that general hospital outpatient clinics which commence operation after December 31, 2007, and prior to January 1, 2012, and for which rates computed pursuant to public health law section 2807(2) are not available, will have the capital cost component of their rates based on a budget as submitted by the facility and as approved by the Department and shall have the operating component of their rates computed in accordance with the following:

A) for the period December 1, 2008 through December 31, 2009, 75% of such rates will reflect the historical 2007 regional average payment per visit as calculated by the department, and 25% of such rates will reflect APG rates as computed in accordance with this Subpart;

B) for the period January 1, 2010 through December 31, 2010, 50% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 50% of such rates shall reflect APG rates as computed in accordance with this Subpart;

C) for the period January 1, 2011 through December 31, 2011, 25% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 75% of such rates shall reflect APG rates as computed in accordance with this Subpart;

D) for periods on and after January 1, 2012, 100% of such rates shall reflect APG rates as computed in accordance with this Subpart.

Further, Diagnostic and Treatment Centers which commence operation after December 31, 2007, and prior to January 1, 2012, and for which rates computed pursuant to public health law section 2807(2) are not available, will have their capital cost component of their rates based on a budget as submitted by the facility and as approved by the department and shall have the operating cost component of their rates computed in accordance with the following:

A) for the period March 1, 2009 through December 31, 2009, 75% of such rates shall reflect the historical 2007 regional average peer group payment per visit as calculated by the department, and 25% of such rates shall reflect APG rates as computed in accordance with this Subpart;

B) for the period January 1, 2010 through December 31, 2010, 50% of such rates shall reflect the historical 2007 regional average peer group payment per visit as calculated by the department, and 50% of such rates shall reflect APG rates as computed in accordance with this Subpart;

C) for the period January 1, 2011 through December 31, 2011, 25% of such rates shall reflect the historical 2007 regional average peer group payment per visit as calculated by the department, and 75% of such rates shall reflect APG rates as computed in accordance with this Subpart;

D) for periods on and after January 1, 2012, 100% of such rates shall reflect APG rates as computed in accordance with this Subpart.

Freestanding ambulatory surgery centers which commence operation after December 31, 2007, and prior to January 1, 2012, and for which rates computed pursuant to public health law section 2807(2) are not available, will have the capital cost component of their rates based computed in accordance with section 86-8.4 of this subpart and the operating cost component of their rates computed in accordance with the following:

A) for the period March 1, 2009 through December 31, 2009, 75% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 25% of such rates shall reflect APG rates as computed in accordance with this Subpart;

B) for the period January 1, 2010 through December 31, 2010, 50% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 50% of such rates shall reflect APG rates as computed in accordance with this Subpart;

C) for the period January 1, 2011 through December 31, 2011, 25% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 75% of such rates shall reflect APG rates as computed in accordance with this Subpart;

D) for periods on and after January 1, 2012, 100% of such rates shall reflect APG rates as computed in accordance with this Subpart.

86-8.7 APGs and relative weights

The proposed addition of section 86-8.7 of Title 10 (Health) NYCCR provides a listing of APGs utilized in their relative weights.

86-8.8 Base rates

The proposed addition of section 86-8.8 of Title 10 (Health) NYCCR delineates the methodology for establishing APG base rates under the APG system. Separate base rates shall be established for each of the five categories of providers set forth in subdivision (a) of section 86-8.1 of this subpart. Further, separate rates for each of the five categories of providers shall be established based on the location of such providers in the upstate region or the downstate region and shall reflect differing regional cost factors as determined by the Department. Additional discrete base rates may be developed by the Department for such peer groups as may be established in regulation. Base rates will be established based on estimated historical per visit payment amounts, adjusted to reflect the level of State appropriations made available for such purposes and calculated on a per visit basis utilizing the same historical visit volume. Base rates shall be peer group specific and reflect the estimated case mix index for each peer group and any projected changes in provider coding patterns for each peer group. These base rates may be periodically adjusted to reflect changes in provider coding patterns and case mix.

86-8.9 Diagnostic coding and rate computation

The proposed addition of section 86-8.9 of Title 10 (Health) NYCCR requires that facilities assign and submit ICD-9 diagnostic codes and HCPCS/CPT procedure codes to each claim as appropriate in accordance with written billing and reporting instructions issued by the Department. The Department will use the claim coding information to assign APG(s)

for each patient visit identified on the claim, utilizing the APG software system to determine the significant procedure APG or the medical visit APG, the applicable ancillary services APGs and the final APG weight applicable to each such visit. The APG software system will incorporate methodologies for consolidation, packaging and discounting to be reflected in the final APG weight to be assigned to each patient visit on the claim.

The operating component of the payment rate will be computed by multiplying the final APG weight for each visit by the applicable base rate. A capital component will then been added to each such payment.

The Department's written billing and reporting instructions will define ambulatory surgery permissible procedures to which the ambulatory surgery rates apply. No visits may be billed as ambulatory surgery unless at least one procedure designated as ambulatory surgery permissible appears on the claim for the date of service for the visit.

In cases where the only reimbursable APGs for a visit are one or more ancillary service APGs, there shall be no reimbursement for capital costs included in the payment for that visit.

86-8.10 Exclusions from payment

The proposed addition of section 86-8.10 of Title 10 (Health) NYCCR stipulates which payments are not subject to the APG payment methodology, including:

A) Drugs and other pharmaceutical products; HIV counseling and testing visits; post-test HIV counseling visits (positive results); day health care service (HIV); TB/directly observed therapy -- downstate levels 1 and 2; TB/directly observed therapy -- upstate levels 1 and 2; AIDS clinic therapeutic visits in general hospital outpatient clinics; child rehabilitation services provided under rate code 2887 in general hospital outpatient clinics; and implantable family planning devices for which separate and distinct outpatient billing and payment were authorized by the Department as of December 31, 2007.

B) Visits solely for the purpose of receiving ordered ambulatory services.

C) Visits solely for the purpose of receiving pharmacy services.

D) Visits solely for the purpose of receiving education or training services, except with regard to services authorized pursuant to clause (A) of subparagraph (ii) of paragraph (f) of subdivision 2-a of section 2807 of the Public Health Law.

E) Visits solely for the purpose of receiving services from licensed social workers, except with regard to psychotherapy services provided by Federally Qualified Health Centers or Rural Health Centers subject to reimbursement pursuant to this Subpart.

F) Visits solely for the purpose of receiving group services, except with regard to clinical group psychotherapy services provided by Federally Qualified Health Centers or Rural Health Centers subject to reimbursement pursuant to this Subpart and provided, however, that reimbursement for such group services shall be determined in accordance with paragraph (h) of section 86-4.9 of this Title.

G) Offsite services, defined as medical services provided by a facility's outpatient staff at locations other than those operated by and under the facility's licensure under Article 28 of the Public Health Law, or visits related to the provision of such offsite services, except with regard to offsite services provided by Federally Qualified Health Centers or Rural Health Centers and provided, however, that reimbursement for such offsite services shall be determined in accordance with paragraph (i) of section 86-4.9 of this Title.

H) Specific listed APGs not eligible for payment in the initial implementation.

I) Specific listed APGs not eligible for reimbursement when they are presented as the only APG applicable to a patient visit or when the only other APGs presented with them are one or more of the APGs listed in subdivision (h).

85-8.11 System updating and incorporation by reference

The proposed addition of section 86-8.11 of Title 10 (Health) NYCCR stipulates that the following elements of the APG rate-setting system will be updated no less frequently than every three years:

A) The listing of reimbursable APGs and the relative weight assigned to each such APG;

B) base rates;

C) applicable ICD-9 codes utilized in the APG software system;

D) applicable CPT-4/HCPCS codes utilized in the APG software system, and

E) the APG software system

This proposed section also incorporates by reference the ICD-9-CM, HCPCS and CPT-4 code systems utilized in the APG rate-setting system.

86-8.12 Payments for extended hours of operation during the transition period

The proposed addition of section 86-8.12 of Title 10 (Health) NYCCR stipulates that for visits provided on or after January 1, 2009, by hospital outpatient clinics and Diagnostic and Treatment Centers which are scheduled and occur on evenings, weekends and on holidays as specified by the Department, a supplemental APG payment amount shall be added on to the otherwise applicable payment amount for each such visit.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen Ceroalo, NYS Department of Health, ESP, Corning Tower Bldg, Rm. 2438, 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:

The requirement to implement a revised Medicaid ambulatory care reimbursement system based on APGs is established in Section 18 of Part C of Chapter 58 of the Laws of 2008, as amended by Section 19 of Part OO of Chapter 53 of the Laws of 2008. As part of this statute, Section 2807(2-a)(e) of the Public Health Law was created, which authorizes the Department of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Group (APG) methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Legislative Objective:

After months of discussion between the Executive, Legislature, hospital associations and numerous other stakeholders, the Legislature chose to create a new, uniform reimbursement methodology for all ambulatory care services provided by hospital outpatient departments (including emergency and ambulatory surgery departments) and diagnostic and treatments centers (DTCs), also known as free-standing clinics, as well as freestanding ambulatory surgery centers. Pursuant to statute, the APG methodology was chosen as the new reimbursement system for these services. APGs pay differential amounts for ambulatory care services based on the resources required for each patient visit. Additionally, the Legislature's other objective was to increase Medicaid payments for ambulatory care services, funded with State and Federal monies.

Needs and Benefits:

The proposed regulations implement the provisions of Public Health Law section 2807(2-a), which requires a new ambulatory care reimbursement methodology based on APGs. This reimbursement methodology provides greater reimbursement for high intensity services and relatively less reimbursement for low intensity services. This new payment methodology also allows for greater payment homogeneity for comparable services across all ambulatory care settings (i.e., Outpatient Department, Ambulatory Surgery, Emergency Department, and Diagnostic and Treatment Centers). By linking payments to the specific array of services rendered, APGs will make Medicaid reimbursement more transparent. These regulatory amendments, combined with new funding appropriated for APG reimbursed services, will provide strong fiscal incentives for health care providers to improve the quality of, and access to, preventive and primary care services.

The current reimbursement system for ambulatory care services is a mix of out-of-date methodologies that have been, over the years, so frozen and capped as to no longer realistically reflect the cost of providing such care. These methodologies are often based on fixed dollar payments that do not vary by severity of illness. While more and more medicine takes place in outpatient settings, these antiquated reimbursement methodologies thwart the future migration of services from costly acute care settings to less-costly primary and preventive care. Examples of current ambulatory care payment methodologies are as follows:

- Hospital outpatient rates, established under Public Health Law (PHL) § 2807(2)(g)(i) are cost based rates, but the operating cost component has been capped at $67.50 per-visit since 1991, which is well under costs.

- Hospital emergency department rates, established under PHL § 2807(2)(g)(ii), are cost based rates, but the operating cost component of the rates are capped at $150 per-visit, which is well under costs.

• DTC rates, established under PHL § 2807(2)(b), are cost based rates, but statutorily frozen since 1995.

• Alternative rates under the Products of Ambulatory Care (PACs) pricing system, available to certain DTCs and hospital outpatient clinics, authorized under PHL § 2807(2)(h), have been frozen since 1995.

• Products of Ambulatory Surgery (PAS) rates for hospitals and DTCs, established under PHL § 2807(2)(e), have been frozen since March of 2003.

Note: The DTC, PACs and PAS rates referenced above are frozen pursuant to an unconsolidated law: § 4 of chapter 81 of the laws of 1995, as most recently amended by § 76 of part C of chapter 58 of the laws of 2007.

The APG methodology addresses the inadequacies of the current system by paying varying amounts per-visit, based on service intensity APGs are a patient classification system designed to explain the amount and type of resources used in various ambulatory visits. Patients in each APG have similar resource use and cost. Consequently, the APG payment for services provided to a person treated in an emergency room for a significant trauma will be relatively more than what would be paid for a patient that receives a minor procedure.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:

In aggregate, health care providers subject to this regulation will see an increase in average per-visit Medicaid funding that will more than offset any miscellaneous costs they may incur associated with implementing the APG methodology. However, it is not anticipated that this will be the case for every affected provider. See ''Costs to State Governments'' below, which provides detail regarding the funding increase to health care providers that are subject to the proposed regulatory provisions.

Costs to Local Governments:

There will be no additional cost to local governments as a result of these amendments because local districts' share of Medicaid costs is statutorily capped.

Costs to State Governments:

Section 19 of Part OO of Chapter 53 of the Laws of 2008 requires a $56 million aggregate increase in rates of payment for services of general hospital outpatient departments, emergency departments and ambulatory surgical departments for the period December 1, 2008, through March 31, 2009, and $178 million for periods after April 1, 2009. This new investment of resources is aimed at further incentivizing ambulatory care services. Further, an additional $1 million was appropriated to enhance APG reimbursement of freestanding clinic services in March 2008, the first month APGs become effective for these providers. These resources, in combination with other appropriated ambulatory care enhanced funding, result in total additional Medicaid reimbursement of $64.6 million in SFY 08/09 for services that are the subject of this regulation. This investment is funded with $ $32.3 million of State funds and $32.3 million of federal funds.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

This regulation does not duplicate other State or federal regulations.

Alternatives:

These regulations are required by the provisions of Public Health Law section 2807(2-a).

During development of the SFY 08/09 Executive Budget, the Department considered various alternatives for creating a new ambulatory care reimbursement methodology. The two major options for a new system were the Ambulatory Patient Group (APG) methodology and the Ambulatory Patient Classification (APC) methodology. The Executive Budget ultimately advanced a proposal to implement the APG methodology because it is comprehensive, covers all medical outpatient services, reimburses based on patients' conditions and severity, and bundles the cost of ancillary services (e.g.: laboratory testing) and procedures into the overall payment. The APC methodology lacks many of these attributes and is more akin with a fee-schedule.

There was much debate during the legislative process regarding the relative merits of enacting APGs or APCs. Associations representing hospitals, clinics, ambulatory surgery centers and other stakeholders made their views known to the Executive and legislature. The ultimate result was enactment into law of the APG reimbursement methodology, because of the strengths of the system described above.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

In aggregate, health care providers subject to this regulation will see an increase in average per-visit Medicaid funding that will more than offset any miscellaneous costs they may incur associated with implementing the APG methodology. However, it is not anticipated that this will be the case for all affected providers.

The APG methodology addresses the inadequacies of the current system by paying varying amounts per-visit, based on service intensity. APGs are a patient classification system designed to explain the amount and type of resources used in various ambulatory visits. Consequently, the new system will be more rational and transparent for health care providers.

The rule will have no direct effect on Local Governments.

Compliance Requirements

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association (AMA), as is currently required. Some billing rate codes will change, but this will have a minimal impact on providers.

The rule should have no direct effect on Local Governments.

Professional Services

No new or additional professional services are required in order to comply with the proposed amendments.

Economic and Technological Feasibility

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to reform the outpatient/ambulatory care fee-for-service Medicaid payment system and direct new funding to health care providers.

The rule should have no direct effect on Local Governments.

Compliance Costs

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact

The proposed amendments reflect statutory intent. The Legislature considered various alternatives for creating a new ambulatory care reimbursement methodology. The two major options for a new system were the Ambulatory Patient Group (APG) methodology and the Ambulatory Patient Classification (APC) methodology. The enacted budget adopted the APG methodology, which, unlike APCs, is comprehensive, covers all medical outpatient services, reimburses providers based on patients' conditions and severity, and bundles the

cost of procedures and ancillary services (e.g. laboratory tests) into the overall payment.

Small Business and Local Government Participation

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2008-09 enacted budget and the Department's issuance in the State Register of federal public notices on March 26, 2008, and June 25, 2008. Further, relevant information is published on the Department's website.

Further, the Department has been actively discussing APG implementation issues with providers since the SFY 08/09 budget was enacted, including providing numerous APG training sessions. The Department took into consideration and responded to providers' comments and questions during training sessions and through its APG website.

Rural Area Flexibility Analysis

Effect on Rural Areas

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association (AMA), as is currently required. Some billing rate codes will change, but this will have a minimal impact on providers.

The rule should have no direct effect on Local Governments.

Professional Services

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact

The proposed amendments reflect statutory intent. The Legislature considered various alternatives for creating a new ambulatory care reimbursement methodology. The two major options for a new system were the Ambulatory Patient Group (APG) methodology and the Ambulatory Patient Classification (APC) methodology. The enacted budget adopted the APG methodology, which, unlike APCs, is comprehensive, covers all medical outpatient services, reimburses providers based on patients' conditions and severity, and bundles the cost of procedures and ancillary services (e.g. laboratory tests) into the overall payment.

Opportunity for Rural Area Participation

Rural areas and were given notice of these proposals by their inclusion in the SFY 2008-09 enacted budget and the Department's issuance in the State Register of federal public notices on March 26, 2008 and June, 25, 2008. Further, relevant information is published on the Department's website.

Job Impact Statement

Nature of Impact:

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the state Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations actually result in a greater State investment of Medicaid reimbursement of ambulatory care services.

Higher Education Services Corporation

NOTICE OF ADOPTION

Adjustments to Income

I.D. No. ESC-23-08-00004-A

Filing No. 793

Filing Date: 2008-08-15

Effective Date: 2008-09-03

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

Action taken: Repeal of section 2202.3(e)(1)(v) and (vi) of Title 8 NYCRR.

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

Subject: Adjustments to income.

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

Text or summary was published in the June 4, 2008 issue of the Register, I.D. No. ESC-23-08-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Acting General Counsel, NYS Higher Education Services Corporation, 99 Washington Avenue, Room #1350, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.org

Assessment of Public Comment

The agency received no public comment.

Insurance Department

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Plan of Conversion by Commercial Mutual Insurance Company

I.D. No. INS-36-08-00008-P

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

Proposed Action: Approval of a plan by Commercial Mutual Insurance Company to convert from an advance premium co-operative property/casualty insurance company to a stock property/casualty insurance company.

Statutory authority: Insurance Law, section 7307

Subject: Plan of conversion by Commercial Mutual Insurance Company.

Purpose: To convert an advance premium co-operative property/casualty insurance company to a stock property/casualty insurance company.

Public hearing(s) will be held at: 10:00 a.m., Oct. 20, 2008 at 25 Beaver St., Rm. 510, New York, NY 10004.

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: Commercial Mutual Insurance Company has submitted a plan pursuant to Section 7307 of the Insurance Law to convert from an advance premium co-operative property/casualty insurance company to a stock property/casualty insurance company.

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

Data, views or arguments may be submitted to: Christine Gralton, New York State Insurance Department, One Commerce Plaza, 20th Floor, Albany, NY 12257, (518) 474-7495, email: cgralton@ins.state.ny.us

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

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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Standards for the Form, Content, and Sale of Health Insurance, Including Standards for Full and Fair Disclosure

I.D. No. INS-36-08-00009-P

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

Proposed Action: Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3217, 4308, 4322 and 4326; Correction Law, section 168-b; and chapter 645 of the Laws of 2005

Subject: Minimum standards for the form, content, and sale of health insurance, including standards for full and fair disclosure.

Purpose: Prohibit coverage of certain benefits to sex offenders registered pursuant to article 6-C of the Correction Law.

Text of proposed rule: Section 52.16 is amended by adding a new subdivision (m) to read as follows:

(m)(1) Pursuant to sections 4322(b-1) and 4326 (d-1), no health maintenance organization or insurer shall issue a standardized individual enrollee direct payment contract issued pursuant to section 4321 or section 4322 of the Insurance Law or a standardized health insurance contract for qualifying small employers and individuals issued pursuant to section 4326 of the Insurance Law that provides coverage for drugs, procedures or supplies for the treatment of erectile dysfunction when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article 6-C of the Correction Law.

(2) Every notice of denial of coverage issued by a health maintenance organization or insurer pursuant to this subdivision shall advise the enrollee how to obtain additional information concerning the denial and the appeal process to challenge the denial. Use of a health maintenance organization's or insurer's existing grievance procedures shall be deemed sufficient to comply with the appeal requirements of this subdivision. Every such notice of denial shall also advise the enrollee that if the enrollee believes that he has been improperly placed on the registry of sex offenders maintained by the New York State Division of Criminal Justice Services, the enrollee should contact the division. The notice shall include the mailing address, phone number and web address of the division.

(3) Coverage of all drugs, procedures and supplies for the treatment of erectile dysfunction may be subject to prior determination of an enrollee's status under article 6-C of the Correction Law by a health maintenance organization or insurer for the purpose of implementing this subdivision.

(4) Nothing in this subdivision shall preclude a health maintenance organization or insurer from conducting utilization review on claims for coverage of drugs, procedures and supplies on behalf of an enrollee determined not to be a person required to register as a sex offender.

(5) Prior to obtaining access from the department of insurance to the registry information of sex offenders obtained from the New York State Division of Criminal Justice Services, a health maintenance organization or insurer shall execute a Nondisclosure Statement and Authorization Form as prescribed by the superintendent. The Nondisclosure Statement and Authorization Form shall be signed by an authorized officer of the health maintenance organization or insurer and shall contain the names of the persons in the employ of the health maintenance organization or insurer who are authorized to receive the information. By signing the form the authorized officer certifies that:

(i) the named employees of the health maintenance organization or insurer are authorized to receive information from the department of insurance regarding persons required to register as sex offenders;

(ii) the health maintenance organization or insurer has developed and implemented administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of the information obtained pursuant to this subdivision, in accordance with Part 421 of this Title (Regulation 173), including but not limited to safeguards to ensure that such information will only be disclosed by the named employees to other persons in the employ of the health maintenance organization or insurer who are directly involved in approving or disapproving reimbursement or coverage for erectile dysfunction drugs, procedures and supplies and that no person receiving such information shall redisclose such information except to other persons in the employ of the health maintenance organization or insurer who are directly involved in approving or disapproving reimbursement or coverage for erectile dysfunction drugs, procedures and supplies; and

(iii) the health maintenance organization or insurer will promptly notify the department of insurance of any relevant changes of persons in the employ of the health maintenance organization or insurer who are authorized to receive such information.

Subdivision (a) of section 52.90 is amended by adding a new paragraph (18) to read as follows:

(18) Upon adoption, with respect to section 52.16(m) of this Part, except that a health maintenance organization or insurer shall have sixty days immediately following the effective date to implement its denial procedures pursuant to said section.

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

Data, views or arguments may be submitted to: Jeffrey J. Pohl, New York Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 485-7815, email: jpohl@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the thirty-sixth amendment to 11 NYCRR 52 is derived from sections 201, 301, 1109, 3217, 4308, 4321, 4322 and 4326 of the Insurance Law, section 168-b of the Correction Law of the State of New York, and Chapter 645 of the Laws of 2005.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law, as well as effectuate any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise make regulations.

Section 1109 authorizes the Superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization and its subscribers.

Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance.

Section 4235 establishes requirements for group accident and health insurance.

Article 43 of the Insurance Law sets forth requirements for non-profit medical and dental indemnity corporations and non-profit health or hospital corporations, including requirements pertaining to minimum benefits of individual and small group contracts. Section 4308 authorizes the Superintendent to formally approve all contracts, certificates, applications, riders, and endorsements of corporations subject to Article 43 of the Insurance Law. Section 4321 provides for the standardization of individ-

ual enrollee direct payment contracts offered by health maintenance organizations. Section 4322 provides for the standardization of individual enrollee direct payment contracts offered by health maintenance organizations which provide out-of-plan benefits. Section 4326 establishes the standardized health insurance contracts for qualifying small employers and individuals, known as ''Healthy New York.''

Chapter 645 of the Laws of 2005 directs the Superintendent to promulgate rules to implement the denial of drugs, procedures and supplies for the treatment of erectile dysfunction by publicly funded health insurance programs when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article 6-C of the Correction Law.

2. Legislative objectives: The statutory sections cited above establish a framework for the form, content and sale of health insurance. The proposed amendment to Regulation 62 is consistent with the legislative objectives of Chapter 645 of the Laws of 2005 in that it would ensure that the Healthy New York program and the standardized individual enrollee direct payment contracts shall not provide coverage for erectile dysfunction drugs, procedures or supplies provided to registered sex offenders and provides for grievance procedures to challenge such denial of coverage.

3. Needs and benefits: Chapter 645 of the Laws of 2005 directed the Superintendent of Insurance to promulgate rules to implement the denial of coverage for drugs, procedures and supplies for the treatment of erectile dysfunction by publicly funded health insurance programs when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article 6-C of the Correction Law. This regulation is consistent with such law. This amendment provides that Healthy New York and the standardized individual enrollee direct payment contracts shall not provide coverage for erectile dysfunction drugs, procedures or supplies provided to registered sex offenders.

Healthy New York and the standardized individual enrollee direct payment contracts required to be issued by health maintenance organizations provide access to a variety of health care services. Among the services covered are a wide range of medically necessary prescription drugs, procedures and devices. Unfortunately, recent evidence has indicated that in some cases publicly funded programs have provided reimbursement for erectile dysfunction drugs that had been dispensed to registered sex offenders. No publicly-funded program, including Healthy New York and standardized individual enrollee direct payment contracts, which are regulated by the Insurance Department, shall provide coverage for such drugs, or for procedures or supplies with similar purposes, in such circumstances.

In accordance with Chapter 645 of the Laws of 2005 the Insurance Department has created a secured internet portal application to which certain designated employees of insurer and health maintenance organizations shall have access. Public access to the sex offender registry only provides information relating to Level 2 (moderate risk) and Level 3 (high risk) offenders. However, the 2005 statute prohibits all registered offenders, including Level 1 (low risk) offenders from receiving reimbursement for erectile dysfunction drugs, procedures and supplies under Healthy New York and standardized individual enrollee direct payment contracts. This application will allow the designated employees to screen individuals seeking coverage for such drugs, procedures and supplies against the entire sex offender registry, enabling the insurer or health maintenance organization to properly deny coverage to individuals who appear on the registry.

In an effort to alleviate the immediate threat to public safety, protect New Yorkers and continue to provide access to a variety of healthcare services, this proposed amendment is necessary to implement the system described above to identify registered sex offenders who are attempting to have drugs, procedures or supplies for the treatment of erectile dysfunction covered under Healthy New York or standardized individual enrollee direct payment contracts.

4. Costs: This regulation imposes no compliance costs upon state or local governments.

There may be minimal additional costs of compliance to insurers and health maintenance organizations that may need to delegate or reassign staffing responsibilities to manage the determination of eligibility process pursuant to the regulation. Costs to the Insurance Department will also be minimal as existing personnel are available to review any modified filings necessitated by the regulation.

5. Local government mandates: The proposed regulation imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork: An officer of each insurer and health maintenance organization will be required to execute a nondisclosure and authorization form on a one-time basis. Insurers and health maintenance organizations will have to make filings modifying existing policy forms to reflect the coverage exclusion required by law. Insurers and health maintenance organizations may utilize their existing notices of denial.

7. Duplication: The proposal does not duplicate, conflict with or overlap existing laws or regulations.

8. Alternatives: There are no reasonable alternatives to be considered other than the aforementioned screening procedure to comply with the directive in the statute to promulgate this regulation. The Insurance Department did have internal discussions regarding whether the insurers and health maintenance organizations should include the contact information for the Division of Criminal Justice Services in a denial notice. It was determined that providing the information was necessary to ensure that an insured denied coverage had sufficient information to direct an inquiry to the proper entity.

The Insurance Department's outreach effort to industry members and consumers was met with universal support for this regulation. There have been no objections to this rule development.

9. Federal standards: There are no minimum standards or regulatory provisions of the federal government for the coverage of drugs, procedures or supplies for the treatment of erectile dysfunction under contracts for qualifying small employers and individuals, known as ''Healthy New York'', or standardized individual enrollee direct pay contracts.

10. Compliance schedule: The provisions of this amendment will take effect immediately upon adoption of the rule. Insurers or health maintenance organizations shall have sixty days immediately following the effective date to implement their denial procedures pursuant to the regulation.

Regulatory Flexibility Analysis

This amendment will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

This amendment will affect insurers and health maintenance organizations licensed to do business in this state and required to issue Healthy New York or standardized individual enrollee direct payment contracts, none of which fall within the definition of small business as found in section 102(8) of the State Administrative Procedure Act. Based upon information provided in the annual statements filed with the Insurance Department, health maintenance organizations and insurers do not fall within the definition of small business found in section 102(8) of the State Administrative Procedure Act because there are none that are both independently owned and have less than one hundred employees.

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

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule informs insurers and health maintenance organizations of the proper procedures to be followed when receiving a claim for insurance reimbursement for erectile dysfunction drugs, procedures and treatments for individuals on the New York State Sex Offender Registry. The Insurance Department finds that the signing of nondisclosure statements and amending notices of denial required by this rule would not impose an adverse economic impact on rural entities. In conjunction with the Division of Criminal Justice Services (DCJS) the Department has developed a secure internet portal, which will be updated on a daily basis by DCJS. This will enable health plans in rural areas to readily identify persons listed on the registry who are thereby ineligible to receive payment or reimbursement for erectile dysfunction drugs, procedures or supplies. Parties in rural areas will not incur expenses to access this data.

3. Costs: This regulation does not establish any new cost requirements on regulated parties. This amendment has no adverse impact on rural areas.

4. Minimizing adverse impact: This rule will not impose any adverse impacts on rural entities.

5. Rural area participation: Notification of the Department's intent to propose this regulation was included in the Department's Regulatory Agenda for June 2007. In addition, the Department discussed the regulation prior to its proposal with interested parties representing insurers and health maintenance organizations, many of whom are located in rural areas. There have been no objections to this rule development.

Job Impact Statement

The amendment to Regulation 62 will not adversely impact job or employment opportunities in New York. The proposed amendments are likely to have no measurable impact on jobs. Insurers and health maintenance organizations may need to delegate or reassign staffing responsibilities to manage the determination of eligibility process pursuant to the regulation. However, it is anticipated that such responsibilities will be handled by

existing personnel. Costs to the Insurance Department will also be minimal as existing personnel are available to review any modified filings necessitated by the regulation.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-36-08-00022-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 Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 7.09

Subject: Medical Assistance Payment for Outpatient Programs.

Purpose: To revise and correct inaccurate references to Part 587 within Part 588 of Title 14 NYCRR.

Text of proposed rule: 1. Subdivision (c) of section 588.5 of Title 14 NYCRR is amended to read as follows:

(c) Reimbursement shall only be made for services identified and provided in accordance with an individual treatment plan or psychiatric rehabilitation service plan as defined in *subdivision (c) of* section 587.4[(c)(27) and (16)] of this Title.

2. Paragraph (7) of subdivision (a) of section 588.6 of Title 14 NYCRR is amended to read as follows:

(7) Family visit: Shall be reimbursed for family treatment services, as defined in *subdivision (c) of* section 587.4[(c)(8)] of this Title, of at least 60 minutes in duration of face-to-face interaction between one recipient, one or more of his or her family members, and one therapist. For purposes of billing family visits which meet these criteria, providers shall bill one regular visit and one collateral visit.

3. Paragraph (4) of subdivision (a) of section 588.7 of Title 14 NYCRR is amended to read as follows:

(4) Group collateral visit: Shall be reimbursed for clinical support services, in accordance with *subdivision (c) of* section 587.4[(c)(5)] of this Title, of at least 60 minutes in duration but not more than two hours and shall represent service to more than one patient and/or his or her collaterals. Such visits need not include patients but shall not include more than 12 collaterals and/or recipients in a face-to-face interaction with a therapist.

4. Paragraph (5) of subdivision (a) of section 588.9 of Title 14 NYCRR is amended to read as follows:

(5) Group collateral visit: shall be reimbursed for clinical support services, in accordance with *subdivision (c) of* section 587.4[(c)(5)] of this Part, of at least 60 minutes in duration but not more than two hours and shall represent services to more than one recipient and/or his or her collaterals. Such visits need not include recipients but shall not include more than 12 collaterals and/or recipients in a face-to-face interaction with a therapist.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, 8th Floor, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

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

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

Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to make technical corrections. No person is likely to object to this rulemaking since it merely corrects references to Part 587, which had been changed as a result of adoption of the rulemaking establishing the Child and Family Clinic Plus Program.

In January, 2008, the Office of Mental Health adopted regulations establishing the Child and Family Clinic Plus Program. This rulemaking necessitated the addition of several definitions pertaining to the Clinic Plus program and resulted in a renumbering of definitions within section 587.4. Existing references in Part 588 were not amended as a result of the adoption of Part 587, and therefore, must be changed to correlate with the corresponding definitions in Part 587. As the rulemaking merely corrects and clarifies reference errors in Part 588 of Title 14 NYCRR, this rulemaking is non-controversial and is appropriately filed as a Consensus rule.

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

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it corrects inaccurate references within Part 588. Since the adoption of the rulemaking establishing the Child and Family Clinic Plus Program resulted in a renumbering of definitions within Part 587, several small corrections are needed within Part 588 for consistency and accuracy. There will be no adverse impact on jobs and employment opportunities as a result of this rulemaking.

Public Service Commission

NOTICE OF ADOPTION

Filing of a Transmission and Distribution Capital Investment Plan for National Grid

I.D. No. PSC-50-07-00008-A

Filing Date: 2008-08-15

Effective Date: 2008-08-15

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

Action taken: On July 16, 2008, the Public Service Commission adopted an order concerning a Transmission and Distribution Capital Investment Plan.

Statutory authority: Public Service Law, section 66

Subject: Filing of a Transmission and Distribution Capital Investment Plan for National Grid.

Purpose: National Grid's Transmission and Distribution Capital Investment Plan.

Substance of final rule: The Commission, on July 16, 2008, adopted an order concerning a Transmission and Distribution Capital Investment Plan, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(06-M-0878SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Quadlogic Controls Corp. on behalf of 184 Kent Fee, LLC, to submeter electricity at 184 Kent Ave. 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 Quadlogic Controls Corp., to submeter electricity at 184 Kent Ave., 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

Quadlogic Controls Corporation on behalf of 184 Kent Fee, LLC, to submeter electricity at 184 Kent 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-0858SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Ownership of Water Company Assets, Status as a Water Company and Failure to Take Steps to Allow for the Attainment of Financing

I.D. No. PSC-36-08-00011-P

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

Proposed Action: The Commission is considering whether to issue an order to show cause to Ridge Associates, LLC regarding its ownership of water company assets, its status as a water company and its failure to take steps to allow for the attainment of financing for need.

Statutory authority: Public Service Law, sections 2(26), (27), 89(b), (c)

Subject: Ownership of water company assets, status as a water company and failure to take steps to allow for the attainment of financing.

Purpose: Issuance of an order to show cause.

Substance of proposed rule: In 1972, the principals of the Minisink Valley Utility Corporation sold the real property on which the water system was located to Ridge Associates, LLC (Ridge). This sale was made without the approval of the Public Service Commission. Since that time, the Minisink Valley Utility Corporation declared bankruptcy and the Pheasant Hill Water Corporation (Pheasant Hill), a collection of customers of the water system, has been appointed operator of the water system.

The system is in need of serious repair and improvements. Pheasant Hill has arranged for a grant and loan to finance the work, but it must pledge the system's real property as collateral on the loan. However, because the land is now owned by Ridge, this cannot be done.

Department of Public Service Staff (Staff) has contacted Ridge regarding the situation, explaining the need for the return of the improperly transferred property and that its ownership of water system assets places it under the jurisdiction of the Public Service Commission. While Ridge has not refused to return the needed land, its responses have been dilatory and Pheasant Hill faces a March 2009 deadline for finalizing financing.

Because of these facts, the Public Service Commission is considering whether to issue an order to show cause to Ridge, demanding an explanation why it should not be considered a water company under the Commission's jurisdiction, so that any necessary steps can be taken to ensure the continuing viability of the system.

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.

(99-W-1572SA2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00012-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by KNW Apartments, LLC, to submeter electricity at 1890 and 1990 Lexington Avenue, 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 KNW Apartments, LLC, to submeter electricity at 1890 and 1990 Lexington Avenue, 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 KNW Apartments, LLC, to submeter electricity at 1890 and 1990 Lexington 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-0839SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00013-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Quadlogics Controls Corp. on behalf of Park Row 9 & 10, LLC, to submeter electricity at 15 Park Row, 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 Quadlogics Controls Corp., to submeter electricity at 15 Park Row, 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 Quadlogic Controls Corporation, on behalf of Park Row 9 & 10, LLC, to submeter electricity at 15 Park Row, 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-0862SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00014-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Renaissance Condominium Partners, II, to submeter electricity at 5 Renaissance Square, White Plains, 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 Renaissance Condominium Partners II, to submeter electricity at 5 Renaissance Square, White Plains, 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 Renaissance Condominium Partners II, to submeter electricity at 5 Renaissance Square, in White Plains, 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-0863SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00015-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Quadlogics Controls Corp. on behalf of Fifth on the Park Condo., LLC, to submeter electricity at 1481 Fifth Ave., 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 Quadlogics Controls Corp., to submeter electricity at 1481 Fifth Avenue, 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 Quadlogic Controls Corporation, on behalf of Fifth on the Park Condominium, LLC, to submeter electricity at 1481 Fifth 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-0869SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00016-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Uniquest Development, to submeter electricity at 200 Delaware Avenue, Buffalo, 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 Uniquest Development, to submeter electricity at 200 Delaware Avenue, Buffalo, 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 Uniquest Development, to submeter electricity at 200 Delaware Avenue, in Buffalo, New York, located in the territory of Niagara Mohawk Power Corporation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: 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-0871SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00017-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 47 East 34 Partners L.P., to submeter electricity at 47 East 34 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 submetering of electricity.

Purpose: To consider the request of 47 East 34 Partners, L.P., to submeter electricity at 47 East 34 Street, 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 47 East 34 Partners, L.P., to submeter electricity at 47 East 34th 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-0907SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00018-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 whether to grant, deny or modify, in whole or part, the petition filed by 785 Partners, LLC, to submeter electricity at 785 8th Avenue, 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 785 Partners, LLC, to submeter electricity at 785 8th Avenue, 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 785 Partners, LLC, to submeter electricity at 785 8th 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-0920SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Land Transfer in the Borough of Manhattan, New York

I.D. No. PSC-36-08-00019-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 Consolidated Edison Company of New York, Inc.'s (Con Edison) petition to approve the transfer of real property to New York Presbyterian Hospital (NYPH) in exchange for compensation and an easement to another land parcel.

Statutory authority: Public Service Law, section 70

Subject: Land Transfer in the Borough of Manhattan, New York.

Purpose: To consider petition for transfer of real property to NYPH.

Substance of proposed rule: The Commission is considering whether to approve or reject a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) for the transfer of real property, pursuant to Public Service Law § 70, from Con Edison to the New York Presbyterian Hospital (NYPH) in the Borough of Manhattan. The property in question is a 10X100 land parcel, which is bordered by other land owned by NYPH. Con Edison proposes to transfer the land to NYPH in exchange for an easement to use a different land parcel nearby that is owned by NYPH. Con Edison needs a temporary easement for pending construction of an underground electric transmission facility and a permanent easement for the long-term placement of the underground transmission facility. In addition to the land transfer, Con Edison will pay compensation to NYPH for the temporary easement and, perhaps, for use of the permanent easement over time.

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-0820SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Commission is Considering Whether Ratepayers Should Pay the Costs That Con Edison Incurred Due to the Steam Pipe Rupture

I.D. No. PSC-36-08-00020-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 adopt the terms of a joint proposal to resolve the Commission's review of the prudence of Consolidated Edison's actions and practices concerning a steam pipe rupture that occurred in Manhattan on July 18, 2007.

Statutory authority: Public Service Law, section 79

Subject: The Commission is considering whether ratepayers should pay the costs that Con Edison incurred due to the steam pipe rupture.

Purpose: The joint proposal, if adopted by the Commission, would require Con Edison to absorb the costs for the steam pipe rupture.

Substance of proposed rule: On August 6, 2008, Consolidated Edison Company of New York, Inc. (Con Edison or the Company), Department of Public Service Staff and the State Consumer Protection Board entered into a Joint Proposal to settle and resolve Case 08-S-0153. In this proceed-

ing, the Commission is investigating the prudence of Con Edison's actions and practices as they relate to the steam pipe rupture that occurred on July 18, 2007. The parties have proposed that Con Edison absorb, and not recover from ratepayers, the capital, carrying, operation and maintenance costs and insurance premiums the Company will incur as a result of the steam pipe rupture. The Commission may adopt, reject or modify the Joint Proposal.

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-S-0153SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Verizon and Maxsip Telecom Corporation for Local Exchange Service and Exchange Access

I.D. No. PSC-36-08-00021-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York (Verizon) and Maxsip Telecom Corporation for approval of an Interconnection Agreement executed on August 7, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon and Maxsip Telecom Corporation for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Verizon and Maxsip Telecom Corporation.

Substance of proposed rule: Verizon New York Inc. and Maxsip Telecom Corporation have reached a negotiated agreement whereby Verizon New York Inc. and Maxsip Telecom Corporation will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until August 6, 2010.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: 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-C-0912SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Verizon and Excelacom Light LLC for Local Exchange Service and Exchange Access

I.D. No. PSC-36-08-00024-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York (Verizon) and Excelacom Light LLC for approval of an Interconnection Agreement executed on July 23, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon and Excelacom Light LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Verizon and Excelacom Light LLC.

Substance of proposed rule: Verizon New York Inc. and Excelacom Light LLC have reached a negotiated agreement whereby Verizon New York Inc. and Excelacom Light LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their network lasting until July 22, 2010.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: 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-C-0883SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00025-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Casa 74th Development, LLC, to submeter electricity at 255 East 74th 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 submetering of electricity.

Purpose: To consider the request of Casa 74th Development, LLC, to submeter electricity at 255 East 74th Street, 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 Casa 74th Development, LLC, to submeter electricity at 255 East 74th 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-0778SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use Unspent Funds from the Low Income (EPOP) Program by Providing Bill Credits to EPOP and HEAP Customers

I.D. No. PSC-36-08-00026-P

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

Proposed Action: The Public Service Commission is considering a petition from Central Hudson Gas & Electric Corp. requesting approval to utilize unspent funds from the low income (EPOP) program by providing bill credits to EPOP and HEAP customers.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Use unspent funds from the low income (EPOP) program by providing bill credits to EPOP and HEAP customers.

Purpose: Consideration of approval to utilize unspent funds from the low income (EPOP) program by providing bill credits.

Substance of proposed rule: The Public Service Commission is considering a petition from Central Hudson Gas & Electric Corp. requesting approval to utilize unspent funds from the low income Enhanced Powerful Opportunity Program (EPOP) by providing bill credits to EPOP and Home Energy Assistance Program (HEAP) customers for the 2008/2009 winter heating season. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: 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.

(05-E-0934SA8)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use Unspent Funds from the Low Income (EPOP) Program by Providing Bill Credits to EPOP and HEAP Customers

I.D. No. PSC-36-08-00027-P

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

Proposed Action: The Public Service Commission is considering a petition from Central Hudson Gas & Electric Corp. requesting approval to utilize unspent funds from the low income (EPOP) program by providing bill credits to EPOP and HEAP customers.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Use unspent funds from the low income (EPOP) program by providing bill credits to EPOP and HEAP customers.

Purpose: Consideration of approval to utilize unspent funds from the low income (EPOP) program by providing bill credits.

Substance of proposed rule: The Public Service Commission is considering a petition from Central Hudson Gas & Electric Corp. requesting approval to utilize unspent funds from the low income Enhanced Powerful Opportunity Program (EPOP) by providing bill credits to EPOP and Home Energy Assistance Program (HEAP) customers for the 2008/2009 winter heating season. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: 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.

(05-G-0935SA7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00028-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Banner Avenue, LLC, to submeter electricity at 1125 Banner 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 Banner Avenue, LLC, to submeter electricity at 1125 Banner 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 Banner Avenue, LLC, to submeter electricity at 1125 Banner 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-0822SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00029-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Banner Avenue, LLC, to submeter electricity at 2750 East 12th Street, Brooklyn, New York.

Statutory authority: Public Service Law, section(s) 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 Banner Avenue, LLC, to submeter electricity at 2750 East 12th Street, 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 Banner Avenue, LLC, to submeter electricity at 2750 East 12th Street, 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-0823SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00030-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 Frawley Plaza, LLC, to submeter electricity at 1295 & 1309 5th Ave. & 1660 Madison Ave. (Schomburg Plaza), 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 Frawley Plaza, LLC, to submeter electricity at Schomburg Plaza, 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 Frawley Plaza, LLC, to submeter electricity at Schomburg Plaza, 1295 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison 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-0836SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00031-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Metro North Owners, LLC, to submeter electricity at 1940—1966 1st Ave and 420 East 102nd Street, New York, New York.

Statutory authority: Public Service Law, section(s) 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 Metro North Owners, LLC, to submeter electricity at 1940-1966 1st Ave. & 420 E. 102nd St., NY, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Metro North Owners, LLC, to submeter electricity at Metro North Apartments, 1940-1966 First Avenue and 420 East 102nd 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-0837SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-36-08-00032-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by North Town Roosevelt, LLC, to submeter electricity at 510—580 Main Street, Roosevelt Island, 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 North Town Roosevelt, LLC, to submeter electricity at 510-580 Main Street, Roosevelt Island, 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

North Town Roosevelt, LLC, to submeter electricity at 510-580 Main Street, in Roosevelt Island, New York, located in the territory of Consolidate 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-0838SA1)

Department of State

EMERGENCY RULE MAKING

Electrical Bonding of Gas Piping, and Protection of Gas Piping Against Physical Damage

I.D. No. DOS-36-08-00003-E

Filing No. 792

Filing Date: 2008-08-13

Effective Date: 2008-08-13

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

Action taken: Addition of sections 1220.1(d)(9), (10), (11), (12) and 1224.1(c)(2), (3), (4) and amendment of section 1224.1(b) of Title 19 NYCRR.

Statutory authority: Executive Law, sections 377 and 378

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

Specific reasons underlying the finding of necessity: At its meeting held on July 24, 2008, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve public safety by clarifying requirements for electrical bonding of gas piping, clarifying requirements for protection of gas piping against physical damage, and adding new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST), which will increase protection against fires caused by lightning strikes in the vicinity of buildings equipped with CSST gas piping and fires caused by accidental punctures of CSST gas piping.

Subject: Electrical bonding of gas piping, and protection of gas piping against physical damage.

Purpose: To clarify and add requirements for bonding and protection of gas piping.

Substance of emergency rule: This rule amends several existing provisions in, and adds several new provisions to, the 2007 edition of the Residential Code of New York State (the ''2007 RCNYS''), the publication which is incorporated by reference in 19 NYCRR Part 1220, and the 2007 edition of the Fuel Gas Code of new York State (the ''2007 FGCNYS''), the publication which is incorporated by reference in 19 NYCRR Part 1224. The new and amended provisions in the 2007 RCNYS and 2007 FGCNYS:

(1) Clarify the situations in which a gas piping system that contains no corrugated stainless steel tubing (''CSST'') will be considered to be ''likely to become energized'' and, therefore, required to be bonded to an effective ground-fault current path;

(2) Specify that a gas piping system that contains no CSST may be bonded in any manner described in Section E3509.7 of the 2007 RCNYS, in cases where the 2007 RCNYS applies, or in any manner described in Section 250.104(B) of NFPA 70-2005, in cases where the 2007 FGCNYS applies;

(3) Require gas piping systems that contain any CSST to be electrically continuous and bonded to the electrical service grounding electrode system at the point where the gas service enters the building or structure;

(4) Specify standards for the installation and bonding of CSST, including standards for the size of the bonding jumper, standards for bonding clamp, standards for the place and manner of attachment of the bonding clamp, and standards for separation of the CSST from other electrically conductive systems;

(5) Specify standards for protection of piping other than black or galvanized steel from physical damage, including standards for the types of shield plates to be used, standards for determining the location where shield plates are required, and additional standards for protection of piping made of CSST; and

(6) Clarify the situations in which section E3509.7 in the RCNYS (entitled ''Bonding other metal piping'') will apply.

This rule also provides that the 2005 edition of standard NFPA 70, entitled ''National Electrical Code'' shall be deemed to be one of the standards incorporated by reference into 19 NYCRR Part 1224.

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 September 24, 2008

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

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

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

2. LEGISLATIVE OBJECTIVES.

Executive Law section 371 provides that it is be the public policy of the State of New York to provide for the promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. The Legislative objective sought to be achieved by this rule is a reduction in the number of fires caused by lightning strikes in the vicinity of buildings equipped with gas piping made of corrugated stainless steel tubing (CSST), and the number of fires caused by accidental puncturing of such piping.

3. NEEDS AND BENEFITS.

The purpose of this rule is to reduce the number of fires caused by lightning strikes in the vicinity of buildings equipped with gas piping made of corrugated stainless steel tubing (CSST), and the number of fires caused by accidental punctures of such piping. This rule is necessary because it has been determined that the existing provisions of the Uniform Code relating to electrical bonding and physical protection of gas piping could be construed as permitting electrical bonding which is not adequate to prevent fires caused by lightning strikes, and as permitting physical shielding which is not adequate to prevent accidental punctures by nails driven into walls containing piping, and because it has been determined that more detailed requirements relating to installation of CSST piping are appropriate. The benefits to be derived from this rule will be a reduction in the number of fires caused by lightning strikes and by accidental punctures of CSST gas piping.

A report or study that served as a basis for this rule is Corrugated Stainless Steel Tubing for Gas Distribution in Buildings and Concerns Over Lightning Strikes, dated August 2007, published by The NAHB Research Center, Inc., which is summarized as follows: ''. . . the primary issue is safeguarding against an electric potential in metallic piping. In the case of proximity lightning, a high voltage can be induced in metallic piping that may cause arcing; and for CSST there is concern that arcing may cause perforation of the CSST wall and therefore cause gas leakage. The fuel gas code, electric code, plumbing code, product standards, and manufacturer installation instructions have different methods of providing dissipation of electrical energy through techniques called bonding and grounding. Since the codes, product standards, and installation requirements are not harmonized, builders and contractors may find differing and possibly conflicting requirements. Generally, the local jurisdiction having authority and code official will rely upon the manufacturer's installation recommendations in lieu of other requirements.'' This report was used to determine the necessity for and benefits derived from this rule in the following manner: CSST manufacturers have always required that CSST

systems be bonded to the electrical system in accordance with the local codes (i.e. FGCNYS, NFGC and the NEC). Based on this report, the bonding methods prescribed within these documents are minimum requirements and are designed to protect the consumer against ground-faults from the premise wiring system only. The intent of this rule is to harmonize the requirements for bonding of metallic piping while providing protection from proximity lightning strikes.

4. COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the Uniform Code provisions which are amended by this rule, as compared to complying with the provisions as currently written, will be negligible.

Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

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

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

First, if the State or any local government constructs a building equipped with gas piping (including gas piping made of CSST), or installs any such piping in an existing building, the State or such local government, as the case may be, will be required to bond the piping and protect the piping from physical damage in the manner required by this rule.

Second, since this rule amends provisions in the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections.

5. PAPERWORK.

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

6. LOCAL GOVERNMENT MANDATES.

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

First, any county, city, town, village, school district, fire district or other special district that constructs a building equipped with gas piping (including gas piping made of CSST), or installs any such piping in an existing building, will be required to comply with the electrical bonding and physical protection provisions amended and/or added by this rule.

Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code; since this rule amends provisions in the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

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

7. DUPLICATION.

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

8. ALTERNATIVES.

The alternative of making no change to the Uniform Code provisions relating to electrical bonding and physical protection of gas piping was considered. However, it was determined that the existing provisions of the Uniform Code could be construed as permitting inadequate electrical bonding and inadequate physical shielding of gas piping, particularly in the case of gas piping made of CSST. Therefore, this alternative was rejected.

The alternative of banning the use of CSST was considered. However, it was determined that the principal concerns about the use of CSST piping (viz., fires cause by lightning strikes in the vicinity of buildings equipped with CSST piping and puncturing of CSST piping by nails driven into walls in which CSST piping is concealed) could be adequately addressed by the increased electrical bonding and physical protection requirements to be added by this rule. Therefore, this alternative was rejected.

9. FEDERAL STANDARDS.

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

10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with this rule in the normal course of operations, either as part of the installation or construction of a new building or the renovation of an existing building.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

This rule amends provisions in the Uniform Fire Prevention and Building Code (''Uniform Code''). The amended provisions clarify requirements for electrical bonding of gas piping and for protection of gas piping against physical damage, and add new requirements for installation of gas piping made from corrugated stainless steel tubing (CSST). Any small business or local government that constructs a building equipped with gas piping (including gas piping made of CSST), or that installs any such gas piping in an existing building, will be affected by this rule. Small businesses that manufacture, sell or install gas piping (including gas piping made of CSST), bonding jumpers, bonding clamps, shield plates, and other related equipment may also be affected by this rule.

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

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install gas piping (including gas piping made of CSST) in accordance with the rule's provisions. In most cases, such installation will be incidental to the construction of a building or will otherwise involve the issuance of a building permit; in such cases, the local government responsible for administering and enforcing the Uniform Code will be required to consider the requirements of this rule when reviewing plans and inspecting work.

3. PROFESSIONAL SERVICES:

The rule will clarify the requirements relating to electrical bonding of gas piping, clarify the requirements relating to protection of gas piping against physical damage, and add new requirements relating to the installation of gas piping made from CSST. No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the provisions amended by this rule, as compared to complying with the provisions as currently written, will be negligible. Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

Any variation in costs of complying with this rule for different types or sizes of small businesses and local governments will be attributable to the size and configuration of the gas piping installed by such entities, and not to nature or type or sizes of such small businesses and local governments. To the extent that larger businesses and larger local governments may tend to own larger buildings, or more than one building, the total costs of compliance would be higher for larger businesses and larger local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. This rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

6. MINIMIZING ADVERSE IMPACT:

The economic impact of this rule on small businesses and local governments will be no greater than the economic impact of this rule on other regulated parties, and the ability of small businesses and local governments to comply with the requirements of this rule should be no less than the ability of other regulated parties to comply. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. The meetings included the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee members, with participation from several CSST manufactures and local government representatives. The Department of State will publish a notice of the emergency adoption of this rule in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends provisions in the Uniform Fire Prevention and Building Code (''Uniform Code''). The amended provisions clarify requirements for electrical bonding of gas piping and for protection of gas piping against physical damage, and add new requirements for installation of gas piping made from corrugated stainless steel tubing (CSST). Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will clarify the requirements relating to electrical bonding of gas piping, clarify the requirements relating to protection of gas piping against physical damage, and add new requirements relating to the installation of gas piping made from CSST. No professional services are likely to be needed in a rural area in order to comply with such requirements.

3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the provisions amended by this rule, as compared to complying with the provisions as currently written, will be negligible. Compliance with this rule will occur when gas piping or is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule. Any variation in costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the gas piping installed by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

4. MINIMIZING ADVERSE IMPACT.

The economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. The meetings included the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee members, with participation from several CSST manufactures and local government representatives. The Department of State will publish a notice of the emergency adoption of this rule in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

Job Impact Statement

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

The rule adds new paragraphs (9), (10), (11), and (12) to subdivision (d) of section 1220.1, amends subdivision (b) of section 1224.1, and adds new paragraphs (2), (3), and (4) to subdivision (c) to section 1224.1 of Title 19 NYCRR. New paragraphs (9), (10), (11), and (12) of subdivision (d) of section 1220.1 and new paragraphs (2), (3), and (4) of subdivision (c) of section 1224.1 will clarify requirements in the Uniform Fire Prevention and Building Code (''Uniform Code'') relating to electrical bonding of gas piping and protection of gas piping against physical damage, and will add new requirements relating to installation of gas piping made of corrugated stainless steel tubing (CSST).

It is anticipated that builders will be able to comply with the electrical bonding and physical protection requirements, as clarified and added by this rule, by using equipment that is currently available and techniques that are currently known. It is also anticipated that any increase costs of compliance resulting from this rule will be negligible. Therefore, it is anticipated that this rule will have no significant adverse impact on jobs or employment opportunities in the building industry, or in businesses that manufacture or install gas piping, other metal piping, or CSST piping.

State University of New York

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-36-08-00002-EP
Filing No. 791
Filing Date: 2008-08-14
Effective Date: 2008-08-14

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

Proposed Action: Amendment of section 302.1(h) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition will be required for the doctor of nursing practice degree program effective for the Fall 2008 semester.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: Amend the State University of New York Tuition and Fees Schedule to require tuition for the nursing practice degree program.

Text of emergency/proposed rule: Amendments to Section 302.1(h) of Title 8 NYCRR.

(h) Students enrolled in professional program of physical therapy *and students enrolled in doctor of nursing practice degree program.*

Tuition

(1) Students, New York State residents: $5,710 per semester or $3,807 per quarter.

(2) Students, out-of-state residents: $9,145 per semester or $6,097 per quarter.

(3) Special students, New York State residents: $476 per semester credit hour or $317 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: $762 per semester credit hour or $508 per quarter credit hour or equivalent.

Credit Hour Equivalent

The [c] *C*hancellor shall determine the equivalent of a credit hour.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 11, 2008.

Text of rule and any required statements and analyses may be obtained from: Marti Anne Ellermann, Senior Counsel, State University of New York, Office of the University Counsel, University Plaza, 353 Broadway, S-333, (518) 443-5400, email: Marti.Ellermann@suny.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University. In accordance with Section 355(2)(h) of the Education Law, no change in tuition can be made effective prior to enactment of the annual budget for the State University of New York. Chapter 53 of the Laws of 2008 enacted the appropriations for the operations of the State University of New York during the 2008-2009 fiscal year, including necessary tuition revenue.

2. Legislative Objectives: The proposed rule will provide essential financial support for the operations of the State University of New York, in furtherance of its statutorily defined mission as set forth in Article 8 of the Education Law.

3. Needs and Benefits: The proposed rule establishes a new tuition rate for a newly authorized program in nursing: the doctor of nursing practice (D.N.P.) which currently exists only at the State University of New York at Stony Brook.

This rule is needed in order to provide essential financial support for a specific and newly-opened degree program of the State University of New York for the 2008-2009 fiscal year and beyond. The State University's cost for this doctoral program exceeds the funding provided by current tuition and State support, due to the need to attract doctorally-prepared faculty in a competitive market experiencing a critical faculty shortage. It should be noted that the tuition to be charged by this State University of New York program is lower than rates charged in similar programs at peer institutions. It is comparable to the tuition rate charged for the professional doctoral program in physical therapy, which remains unchanged.

The amendment will establish tuition for students pursuing the doctoral degree in nursing practice at an annual rate of $11,420 for New York State residents and $18,290 for nonresidents.

4. Costs: Students enrolled in the doctor of nursing practice program of the State University of New York will be required to pay tuition of $11,420 per year for residents and $18,290 for nonresidents, which is identical to the tuition charged to students in the doctor of physical therapy (D.P.T.) program. This rate is $4,520 higher than the resident rate for other doctoral programs and $7,370 higher than the rate charged nonresidents for other doctoral programs. There are currently 34 students enrolled in this program at Stony Brook University with an expected annual enrollment of 30-45 students.

5. Local Government Mandates: There are no local government mandates.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: There is no acceptable alternative to this amendment, given the nature of the program costs, the 2008-2009 State Budget and the prevailing rates at other comparable institutions. Prospective students and students who have been enrolled in the program have been notified of the new tuition rate, which will be effective for the Fall 2008 semester and thereafter, through campus publications and web sites as well as in face to face information sessions.

9. Federal Standards: None.

10. Compliance Schedule: It is intended that the amendments will be effective for the Fall 2008 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Shelter Allowances

I.D. No. TDA-36-08-00001-P

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

Proposed Action: This is a consensus rule making to amend section 352.3 of Title 18 NYCRR.

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

Subject: Shelter Allowances.

Purpose: Sets forth the new calculation of shelter allowances for individuals and families receiving public assistance and residing in city, State or federally aided public housing.

Text of proposed rule:

Paragraph (1) of subdivision (d) of section 352.3 is amended to read as follows:

(1) *(i)* An allowance for rent must be made for recipients who are tenants of city, State or federally aided public housing up to the amount actually paid or the following schedule, whichever is less, except when a modified schedule of allowances is approved by this [department] *office* for a specific housing authority *and the modified schedule provides for larger allowances* or when the housing authority calculates the rent based on a percentage of household income:

[Apartment size	Monthly rent
0 Bedrooms	$ 65
1 Bedroom	77
2 Bedrooms	90
3 Bedrooms	101
4 Bedrooms	107
5 Bedrooms	110]

a. Effective August 15, 2007, public housing authorities may charge rent up to 50% of the shelter maximums found in subdivision (a) of this section.

b. Effective August 15, 2008, public housing authorities may charge rent up to 75% of the shelter maximums found in subdivision (a) of this section.

c. Effective August 15, 2009, public housing authorities may charge rent up to the shelter maximums found in subdivision (a) of this section.

[(i)] *(ii)* Modified schedule approved. When a modified schedule is approved by this office for a specific housing authority, the allowance for rent must be the amount actually paid up to the approved schedule amount. A housing authority may request, and the office may grant an increase not to exceed 10 percent in a 12-month period until the modified schedule for the housing authority reaches the maximum allowances for the district found in subdivision (a) of this section. *Effective August 15, 2009, modified schedules approved by this office shall be void.*

[(ii)] *(iii)* Rent calculated based on a percentage of income. For any household for which the amount of rent is determined by a public housing authority as a percentage of either gross or adjusted gross income, the applicable shelter allowance is the amount so calculated up to the maximum allowance for the given household size found in subdivision (a) of this section.

Text of proposed 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

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

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

Consensus Rule Making Determination

This proposed rule sets forth the new calculation of shelter allowances for individuals and families receiving public assistance and residing in city, State or federally aided public housing. Recipients of public assistance may be eligible for shelter allowances to be included in their standards of need to help reflect the costs of housing. The amounts of the shelter allowances are governed by the SSL and are set forth in the State regulations. In the past, the Social Services Law (SSL) and the State regulations allowed the maximum shelter allowances for private housing to exceed the maximum shelter allowances for public housing. Public housing authorities were provided a means to help bridge this gap. They could request incremental increases in their tenants' shelter allowances each year. However, not all public housing authorities made these requests.

Chapter 598 of the Laws of 2007 was enacted to help resolve outstanding disparities between maximum shelter allowances for private housing and those for public housing. Chapter 598 added a new paragraph (c) to SSL § 131-a(2) to accelerate the shelter schedules for public housing so that the maximum shelter allowances for public housing could equal the maximum shelter allowances for private housing in a matter of two years. Effective August 15, 2007, the shelter allowances for public housing could equal fifty percent of the maximum shelter allowances for private housing. As of August 15, 2008, the shelter allowances for public housing could

equal seventy-five percent of the maximum shelter allowances for private housing. Lastly, as of August 15, 2009, the maximum shelter allowances for public housing would equal the maximum shelter allowances for private housing. Thus, by August 15, 2009, any disparities in the maximum shelter allowances for public housing and private housing would be resolved.

Chapter 598 allowed modified shelter allowance schedules for public housing to remain in place as long as those schedules were greater than fifty percent of the maximum shelter allowance for private housing as of August 15, 2007, and greater than seventy-five percent, as of August 15, 2008. This prevented the public housing authorities which had requested incremental increases in their tenants' shelter allowances from being penalized. However, Chapter 598 provided that by August 15, 2009, the maximum shelter allowances for public housing would equal the maximum shelter allowances for private housing.

The provisions of SSL § 131-a(2)(c), as amended by Chapter 598, are non-discretionary, and the local social services districts (districts) already have begun implementing these statutory changes. The districts have made the first adjustments, effective August 15, 2007, to the maximum shelter allowances for public housing. These proposed amendments are needed to conform the provisions of 18 NYCRR § 352.3(d)(1) to the non-discretionary provisions set forth in SSL § 131-a(2)(c) and to reflect the adjustments which districts already have implemented and those that they will make in the future.

The Office of Temporary and Disability Assistance (the Office) anticipates that no person is likely to object to the adoption of this proposed rule. The Office is not exercising any discretion. Instead, it is amending its regulations to reflect nondiscretionary statutory requirements which the districts already have begun to implement.

Job Impact Statement

A Job Impact Statement is not required for the proposed amendments. It is apparent from the nature and the purpose of the proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities. The proposed amendments will not affect in any real way the jobs of the workers in the local social services districts. The changes reflect the passage of Chapter 598 of the Laws of 2007 which amended the Social Services Law concerning shelter allowances for individuals and families receiving public assistance and residing in city, State or federally aided public housing. Thus the changes will not have any adverse impact on jobs and employment opportunities in the State.