

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

Repeal of Part 2 of Title 2 NYCRR

I.D. No. AAC-03-09-00008-A
Filing No. 262
Filing Date: 2009-03-19
Effective Date: 2009-04-08

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

Action taken: Repeal of Part 2 of Title 2 NYCRR.

Statutory authority: State Finance Law, section 8

Subject: Repeal of Part 2 of Title 2 NYCRR.

Purpose: To repeal Part 2 of Title 2 NYCRR.

Text or summary was published in the January 21, 2009 issue of the Register, I.D. No. AAC-03-09-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Children and Family Services

EMERGENCY RULE MAKING

Mandatory Disqualification of Foster and Adoptive Parents Based on Criminal History

I.D. No. CFS-14-09-00001-E
Filing No. 263
Filing Date: 2009-03-19
Effective Date: 2009-03-19

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

Action taken: Amendment of sections 421.27(d)(1) and 443.8(e)(1); and repeal of sections 421.27(k) and 443.8(k) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 378-a(2) as amd. by L. 1997, ch. 436 and L. 2008, ch. 623

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

Specific reasons underlying the finding of necessity: The regulations must be filed on an emergency basis to protect the health and safety of children in foster boarding homes and adoptive placements. The regulations reflect newly enacted state statutory standards.

Subject: Mandatory disqualification of foster and adoptive parents based on criminal history.

Purpose: The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history checks of foster and adoptive parents.

Text of emergency rule: Paragraph (1) of subdivision (d) of section 421.27 is amended to read as follows:

(d)(1) Except [as authorized herein and] as set forth in subdivision (h) of this section, the authorized agency must deny an application to be an approved adoptive parent or revoke the approval of an approved adoptive parent when a criminal history record of the prospective or approved adoptive parent reveals a conviction for:

- (i) a felony conviction at any time involving:
 - (a) child abuse or neglect;
 - (b) spousal abuse;
 - (c) a crime against a child, including child pornography;

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery[, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) approval of the application or continuing approval will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within five years for physical assault, battery, or a drug-related offense [, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(a) such denial will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) approval of the applicant will not place the child's safety in jeopardy and will be in the best interests of the child].

Notwithstanding any other provision to the contrary, with regard to an adoptive parent fully approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.

Subdivision (k) of section 421.27 is repealed.

Paragraph (1) of subdivision (e) of section 443.8 is amended to read as follows:

(e)(1) Except as [authorized herein and as] set forth in this section, the authorized agency must deny an application for certification or approval as a certified or approved foster parent or deny an application for renewal of the certification or approval of an existing foster parent *submitted on or after October 1, 2008* or revoke the certification or approval of an existing foster parent when a criminal history record of the prospective or existing foster parent reveals a conviction for:

(i) a felony conviction at any time involving:

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography; or

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; unless the applicant or approval or certification as a foster parent or the certified or approved foster parent demonstrates that:

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within the past five years for physical assault, battery, or a drug-related offense; unless the applicant for certification or approval as a foster parent or the certified or approved foster parent demonstrates that:

(a) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child].

Notwithstanding any other provision to the contrary, with regard to a foster parent fully certified or approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.

Subdivision (k) of section 443.8 is repealed.

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 June 16, 2009.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, N.Y. 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out its powers and duties.

Section 34(3)(f) of the SSL authorizes the commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State, both by the State and by local government units.

Section 378-a(2) of the SSL requires criminal history record reviews of prospective foster and adoptive parents, as well as other persons over the age of 18 who reside in the home of such applicants.

Chapter 623 of the laws of 2008 amended the criminal history review standards set forth in section 378-a(2) of the SSL. Section 5 of

Chapter 623 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provision of the Chapter.

2. Legislative objectives:

The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history record reviews of applicants for certification or approval as foster or adoptive parents. The regulations reflect amendments to federal and state statutory standards relating to situations where such applicant has been convicted of a mandatory disqualifying crime. The regulations eliminate the category of presumptive disqualifying crimes and replace that category with the category of mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents.

Chapter 623 of the Laws of 2008 and the regulations implement changes in federal statutes that had previously allowed states to opt out of federal criminal history record review requirements for prospective foster or adoptive parents and that required the application of mandatory disqualification for certain categories of felony convictions. The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L.109-248) eliminated effective October 1, 2008 the ability of states to opt out of federal criminal history review standards and required states to comply in order to receive federal Title IV-E payments for foster care or adoption assistance.

3. Needs and benefits:

The regulations are necessary for OCFS to conform to federal and state statutory changes to criminal history record review standards. The regulations reflect the federal requirement set forth in the federal Adam Walsh Child Protection and Safety Act of 2006 that states must adopt federal mandatory disqualification standards for prospective foster and adoptive parents who are convicted of certain categories of felonies. Compliance with the federal requirement is a condition for New York State to have a compliant Title IV-E State Plan which is a condition for New York State to receive federal funding for foster care and adoption assistance.

The regulations are also necessary to reflect amendments to section 378-a(2) of the SSL that eliminated the category of presumptive disqualifying crimes. The regulations reflect the mandatory disqualification of an applicant to be certified or approved as a foster or adoptive parent when such applicant has been convicted of a certain category of felony.

The regulations will not impact persons who were fully certified or approved as a foster or adoptive parent prior to October 1, 2008 for convictions that occurred prior to that date.

4. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding earned on an annual basis.

5. Local government mandates:

The regulations adopt the standards that were in place in 1999 with the enactment of Chapter 7 of the Laws of 1999, but were amended by Chapter 145 of the Laws of 2000 that created the criteria of presumptive disqualifying crimes.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe have been required to perform criminal history record reviews since 1999 in regard to New York State checks through the New York State Division of Criminal Justice Services and since 2007 in regard to a national criminal history record check through the Federal Bureau of Investigation. The regulations do not expand who must have a criminal history record check in relation to foster care or adoption.

6. Paperwork:

Authorized agencies are currently required to document their criminal history record review activities. The regulations do not impose ad-

ditional paperwork requirements on social services districts or voluntary authorized agencies.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

The proposed regulations are required to implement the state law, Chapter 623 of the Laws of 2008 and the federal Adam Walsh Child Protection and Safety Act of 2006.

9. Federal standards:

The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) eliminated the ability of states to opt out of the federal criminal history record review requirements set forth in section 471(a)(20) of the Social Security Act for prospective foster and adoptive parents. New York State had opted out of the federal requirements in 2000 through Chapter 145 of the Laws of 2000 that created the category of presumptive disqualifying crimes. Effective October 1, 2008, for a state to have a compliant Title IV-E State Plan, the state must apply the federal criminal history record review standards for applicants for certification or approval as foster or adoptive parents. Those standards prohibit the final certification or approval of a prospective foster or adoptive parent who has a felony conviction at any time for abuse or neglect, spousal abuse, or a crime against a child or for a crime involving violence. In addition, the federal statutes prohibit final certification or approval of a prospective foster or adoptive parent who has been convicted within 5 years of such application for assault or a drug related offense.

10. Compliance schedule:

Chapter 623 of the Laws of 2008 provides for an October 1, 2008 effective date of the standards set forth in the regulations. OCFS is developing the necessary revised forms and instructions to authorized agencies to implement the revised standards.

Regulatory Flexibility Analysis

1. Effect on small business and local governments:

The regulations will affect social services districts, Indian tribes with an agreement with the State of New York to provide foster care and adoption services and voluntary authorized agencies that certify or approve prospective foster and adoptive parents. There are 58 social services districts and approximately 160 voluntary authorized agencies. The St. Regis Mohawk Tribe has an agreement with the State of New York to provide foster care and adoption services.

2. Reporting, recordkeeping and compliance requirements:

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The 2006 federal Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional record keeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

3. Professional services:

No new or additional professional services would be required by small businesses or local governments in order to comply with the regulations.

4. Compliance costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding earned on an annual basis.

5. Economic and technological feasibility:

The social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe affected by the regulations have the economic and technological ability to comply with the regulations. The regulations do not expand the categories of persons for whom a criminal history record review must be completed. OCFS is making modifications to the statewide automated child welfare information system, CONNECTIONS and to its criminal history information system, CHRS to support and implement the regulations.

6. Minimizing adverse impact:

The regulations reflect specific amendments to state statute enacted by Chapter 623 of the Laws of 2008 and amendments to federal standards as enacted by the Adam Walsh Child Protection and Safety Act of 2006. The process for fingerprinting foster or adoptive parents and other persons over the age of 18 who reside in the home of the applicants has been the same since 1999 for in-state checks through the New York State Division of Criminal Justice Services and since 2007 for national checks through the Federal Bureau of Investigation. While the regulations will change the standards following the receipt of the result of the criminal history check, the regulations will not change the process for taking and reviewing of fingerprints. The regulations build on existing procedures.

7. Small business and local government participation:

OCFS advised social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks in the federal Adam Walsh Child Protection and Safety Act of 2006 and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster /Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCFS-INF-07 Preparation for the Elimination of the "Out-Out" Provision for conducting Criminal History Record Checks) issued May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of that conference is also available to all agencies that were not able to attend.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect 44 social services districts that are defined as being rural counties and the seven social services districts that include significant rural areas within their borders. The regulations will also affect the St. Regis Mohawk Tribe that has an agreement with the State of New York to provide foster care and adoption services and which services a rural community. In addition, there are approximately 100 voluntary authorized agencies that service rural communities that will be affected by the regulations.

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

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act

of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The federal 2006 Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional record keeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

3. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding on an annual basis.

4. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impacts on rural areas.

5. Rural area participation:

The Office of Children and Family Services (OCFS) advised social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks by the Adam Walsh Child Protection and Safety Act of 2006 and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster/Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCF-INF-07 Preparation for the Elimination of the "Opt-Out" Provision for Conducting Criminal History Record Checks) issued on May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a statewide video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of the video conference is available for agencies not able to attend.

Job Impact Statement

A full job impact statement has not been prepared for the regulations which contain new requirements imposed by Chapter 623 of the Laws of 2008. The regulations will not have an impact on jobs and employment opportunities because they will not impact the number of staff authorized agencies must maintain to certify, approve or supervise foster or adoptive homes. The regulations impact persons who are not in an employment relationship with the agency.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00011-A

Filing No. 273

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-08-00008-A

Filing No. 272

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 27, 2008 issue of the Register, I.D. No. CVS-35-08-00008-P.

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

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

Assessment of Public Comment

One public comment was received from the New York State Public Employees Federation, AFL-CIO ("PEF") during the public comment period. PEF opposes removing the limiting the number of positions of Revenue Crime Specialist 1 ("RCS 1") from the Department of Taxation and Finance ("Tax Dept") listing in Appendix 2 of 4 NYCRR. PEF further maintains that all positions RCS 1 should be placed in the competitive jurisdictional class because RCS 1 incumbents perform the same investigatory and law enforcement activities as competitive class Excise Tax Investigators ("ETIs"), except ETIs focus solely on cigarette tax evasion activities.

Positions of RCS 1 investigate all types of revenue crimes, including increasingly sophisticated accounting and other "white collar" tax fraud activities. By contrast, ETIs investigate cigarette revenue crimes, typically a more "routine" form of criminal activity. Knowledge, skills and abilities required for successful performance of the full range of highly complex and specialized criminal revenue crime investigations performed by RCS 1 are not specifically assessed through competitive civil service examinations for "standard" entry-level investigatory titles. The Department of Civil Service has no history creating a competitive examination for the RCS 1 title, which exists only in the non-competitive class.

The proposed resolution is consistent with all prior Civil Service Commission determinations regarding the RCS 1 title and removes the limit on the number of RCS 1 positions to enhance the Tax Dept's enforcement capacity in the important and burgeoning area of revenue crimes.

PEF has not established how the specialized investigatory background needed for successful performance as an RCS 1, including experience with complex white collar tax crimes, can be adequately assessed via competitive examination. Knowledge, skills and abilities are addressed through carefully drawn non-competitive minimum qualifications, which include several years' experience conducting revenue crimes investigations. Accordingly, the Civil Service Commission has determined that based upon the record, competitive examination is impracticable and there are no viable significant alternatives to continued placement of RCS 1 positions in the non-competitive class. The resolution shall be adopted as proposed.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00001-A
Filing No. 278
Filing Date: 2009-03-23
Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00003-A
Filing No. 280
Filing Date: 2009-03-23
Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00006-A
Filing No. 279
Filing Date: 2009-03-23
Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00007-A
Filing No. 275
Filing Date: 2009-03-23
Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00008-A
Filing No. 282
Filing Date: 2009-03-23
Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00009-A
Filing No. 277
Filing Date: 2009-03-23
Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-08-00010-A

Filing No. 274

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text of final rule: At a meeting of the State Civil Service Commission held September 9, 2008, the following resolution was adopted pursuant to Section 6 of the Civil Service Law:

RESOLVED, That subject to the approval of the Governor, Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, be and hereby is amended as follows:

1. in the Department of State, by deleting therefrom the subheading "State Ethics Commission" and the following positions: Administrative Officer, Associate Counsel (3), Confidential Assistant, Confidential Clerk (3), Confidential Stenographer (4), Counsel, Director Public Information, Executive Director, Hearing Examiner, Investigative Auditor 1, Investigative Auditor 2, Investigator (4), Special Assistant

2. in the Department of State under the subheading "Commission on Public Integrity," by adding thereto the following positions: Administrative Officer, Associate Counsel (4), Compliance Auditor (CPI) (3), Confidential Assistant (4), Confidential Clerk (5), Confidential Legal Assistant, Confidential Stenographer (4), Counsel, Deputy Counsel (2), Director Public Information, Executive Director, Filings Examiner (CPI) (11), Hearing Examiner, Information Technology Specialist (CPI) (3), Investigator (5), Manager Information Services, Program Manager (3), Secretary (2), Training Assistant (2), Training Associate (2) it having been determined that competitive or non-competitive examination is not practicable for filling these positions.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 1. Paragraph should read: in the Department of State under the subheading "Commission on Public Integrity," by deleting therefrom the positions of Compliance Auditor (3) and by adding thereto the positions of Compliance Auditor (CPI) (3).

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA, and JIS.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-08-00011-A

Filing No. 283

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-08-00012-A

Filing No. 285

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-08-00013-A

Filing No. 284

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-45-08-00014-A

Filing No. 286

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00014-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00015-A

Filing No. 281

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00016-A

Filing No. 276

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class and to classify a position in the non-competitive class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00016-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the NYS Register

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-12-08-00006-P	March 19, 2008	March 19, 2009

Department of Correctional Services

NOTICE OF ADOPTION

Packages and Articles Sent or Brought to Institutions

I.D. No. COR-03-09-00002-A

Filing No. 265

Filing Date: 2009-03-19

Effective Date: 2009-04-08

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

Action taken: Amendment of section 724.2(a)(1) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Packages and Articles Sent or Brought to Institutions.

Purpose: To remove reference to inmates ‘‘under sentence of death’’, consistent with NYS Court of Appeals ruling.

Text or summary was published in the January 21, 2009 issue of the Register, I.D. No. COR-03-09-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue - Building 2- State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Maureen.Boll@DOCS.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Contacts of Institutions and Employees

I.D. No. COR-03-09-00009-A

Filing No. 266

Filing Date: 2009-03-19

Effective Date: 2009-04-08

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

Action taken: Repeal of section 51.19 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Public Contacts of Institutions and Employees.

Purpose: To remove references to ‘‘under sentence of death’’, ‘‘electric chair’’ and ‘‘execution’’, consistent with NYS Court of Appeals ruling.

Text or summary was published in the January 21, 2009 issue of the Register, I.D. No. COR-03-09-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue - Building 2- State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Maureen.Boll@DOCS.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Special Education Programs and Services

I.D. No. EDU-31-08-00014-E

Filing No. 288

Filing Date: 2009-03-25

Effective Date: 2009-03-27

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

Action taken: Amendment of sections 200.4 and 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 4402(1-7), 4403(3) and 4410(13)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date by which school districts would be required to use the forms prescribed by the Commissioner for individualized education programs (IEPs), Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) meeting notices and for prior written notices (notice of recommendation).

The regulations that require, commencing on January 1, 2009, the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) were adopted in September 2007. Since that date, the Department sought extensive comment from the field on the development of the forms from stakeholders across the State. In response to the comments, the regulations were amended by emergency action, effective October 28, 2008, to extend the initial effective date for required use of the forms from January 1, 2009 to September 1, 2009. The regulations were subsequently revised in response to public comment and adopted as a second emergency action, effective January 26, 2009, to further extend the effective date for required use of the State forms to the 2011-12 school year.

Extending the date for the required use of these forms will allow additional time for VESID to work with stakeholders to field check proposed forms and to provide professional development on the new forms. Furthermore, the additional extension should provide the needed time for cost-effective conversion to the State's required forms and for the State to make professional development available through no-cost means such as informational materials, web-conferencing and professional development through its technical assistance networks. In addition, extending the effective date for the required use of the State forms will avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-09 school year.

A Notice of Proposed Rule Making was published in the State Register on July 30, 2008. The proposed rule was substantially revised in response to public comment and Notices of Revised Rule Making were published in the State Register on October 22, 2008, and on January 21, 2009. The proposed amendment was adopted as a permanent rule at the March 16-17, 2009 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the adopted rule can become effective is after its publication in the State Register on April 8, 2009. However, the second emergency rule which took effect on January 26, 2009 will expire on March 26, 2009. If the emergency rule were to expire, the effective date for required use of the State forms would revert to January 1, 2009, and cause disruption to the administration of IEPs, meeting notices and prior written notices (notices of recommendation).

Therefore, emergency action is necessary now for the preservation of the general welfare in order to ensure that the emergency rule, which extended the initial effective date for required use of State forms for IEPs, meeting notices and prior written notices (notices of recommendation) to the 2011-12 school year, remains continuously in effect until the effective date of the rule's permanent adoption, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if the effective date of this requirement were to revert to January 1, 2009.

Subject: Special education programs and services.

Purpose: To extend date for required use of State forms for IEPs, prior written notice (notice of recommendation) and meeting notice.

Text of emergency rule:

1. Paragraph (2) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 27, 2009, as follows:

(2) Individualized education program (IEP). If the student has been determined to be eligible for special education services, the committee shall develop an IEP. IEPs developed [on or after January 1, 2009,] *for the 2011-12 school year, and thereafter*, shall be on a form prescribed by the commissioner. In developing the recommendations for the IEP, the committee must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the results of the student's performance on any general State or districtwide assessment programs; and any special considerations in paragraph (3) of this subdivision. The IEP recommendation shall include the following:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .
- (ix) . . .
- (x) . . .
- (xi) . . .
- (xii) . . .

2. Paragraph (1) of subdivision (a) of Section 200.5 of the Regulations of the Commissioner of Education is amended, effective March 27, 2009, as follows:

(1) Prior written notice (notice of recommendation) that meets the requirements of section 200.1(oo) of this Part must be given to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education to the student. [Effective January 1, 2009, the prior] *Prior written [notice] notices issued during the 2011-12 school year, and thereafter*, shall be on [the] a form prescribed by the commissioner.

3. Paragraph (1) of subdivision (c) of Section 200.5 of the Regulations of the Commissioner of Education is amended, effective March 27, 2009, as follows:

(1) Whenever the committee on special education proposes to conduct a meeting related to the development or review of a student's IEP, or the provision of a free appropriate public education to the student, the parent must receive notification in writing at least five days prior to the meeting. The meeting notice may be provided to the parent less than five days prior to the meeting to meet the timelines in accordance with Part 201 of this Title and in situations in which the parent and the school district agree to a meeting that will occur within five days. The parent may elect to receive the notice of meetings by an electronic mail (e-mail) communication if the school district makes such option available. [Effective January 1, 2009, meeting notice] *Meeting notices issued during the 2011-12 school year, and thereafter*, shall be on a form prescribed by the commissioner.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-31-08-00014-P, Issue of July 30, 2008. The emergency rule will expire May 23, 2009.

Text of 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, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations to carry out State laws regarding education.

Education Law section 4402 establishes district's duties regarding education of students with disabilities.

Education Law section 4403 outlines Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in their best interests.

Education Law section 4410 outlines special education services and

programs for preschool children with disabilities. Section 4410(13) authorizes Commissioner to adopt regulations.

LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to ensure consistency in procedural safeguards and carry out the legislative objectives in the aforementioned statutes.

NEEDS AND BENEFITS:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date by which school districts would be required to use the forms prescribed by the Commissioner for individualized education programs (IEPs), Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) meeting notices and for prior written notices (notice of recommendation). The regulations that require the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) as of January 1, 2009 were adopted in September 2007. In response to public comment, the Department is proposing to further extend the initial effective date by requiring IEPs developed for, and meeting notices and prior written notices (notices of recommendation) issued during, the 2011-12 school year be on forms prescribed by the Commission. Extending the date for the required use of these forms will allow additional time for VESID to work with stakeholders to field check proposed forms and to provide professional development on the new forms. Furthermore, the additional extension should provide the needed time for cost-effective conversion to the State's required forms and for the State to make professional development available through no-cost means such as informational materials, web-conferencing and professional development through its technical assistance networks. In addition, extending the effective date for the required use of the State forms will avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-09 school year.

COSTS:

- a. Costs to State government: None
- b. Costs to local governments: None
- c. Costs to regulated parties: None
- d. Costs to the State Education Department of implementation and continuing compliance: None.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations. The proposed amendment will extend the initial effective date for requiring the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice.

Section 200.4 was revised to require IEPs developed for the 2011-2012 school year, and thereafter, be on a form prescribed by the Commissioner.

Section 200.5 was revised to require prior written notices (notices of recommendation) and meeting notices issued during the 2011-2012 school year, and thereafter, be on a form prescribed by the Commissioner.

PAPERWORK:

The proposed amendment will extend the initial effective date for requiring the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice, and does not impose any additional paperwork requirements.

DUPLICATION:

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

ALTERNATIVES:

Since the September 2007 adoption of regulations requiring, as of January 1, 2009, the use of the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice, the Department has obtained extensive public comment on the development of the forms from stakeholders across the State. Various alternative effective dates for mandatory forms were considered. However, in response to public comment, the Department proposes to extend the effective date for required use of the forms from January 1, 2009 to September 1, 2009 to allow the Department additional time to work with stakeholders to field check proposed forms and to provide professional development of the new forms and guidance. In addition, the proposed amendment will require school districts to use the new forms at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

FEDERAL STANDARDS:

The proposed amendment is not required by federal law or regulations, but is necessary to ensure consistency in procedural safeguards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment will require school districts to use the new forms for IEPs, prior written notice (notice of recommendation) and meeting notice at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to the provision of special education programs and services to students with disabilities, and is necessary to ensure consistency in procedural safeguards by extending the date for required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice and providing that the completion of such forms be consistent with guidelines prescribed by the Commissioner. Because it is evident from the nature of the rule that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment will extend the date for required use of the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice, and does not impose any additional compliance requirements upon local governments beyond those imposed by federal statutes and regulations.

Section 200.4 was revised to require IEPs developed for the 2011-2012 school year, and thereafter, be on a form prescribed by the Commissioner.

Section 200.5 was revised to require prior written notices (notices of recommendation) and meeting notices issued during the 2011-2012 school year, and thereafter, be on a form prescribed by the Commissioner.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

COMPLIANCE COSTS:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the initial effective date for requiring the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed does not impose any new technological requirements. Economic feasibility is addressed above under Compliance Costs.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the initial effective date for requiring the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes.

The regulations that require the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) as of January 1, 2009 were adopted in September 2007. In response to public comment, the Department is proposing to further extend the effective date by requiring IEPs developed for, and meeting notices and prior written notices (notices of recommendation) issued during, the 2011-12 school year be on forms prescribed by the Commission. Extending the date for the required use of these forms will allow additional time for VESID to work with stakeholders to field check proposed forms and to provide professional development on the new forms. Furthermore, the additional extension should provide the needed time for cost-effective conversion to the State's required forms and for the State to make professional development available through no-cost means such as informational materials, web-conferencing and professional development through its technical assistance networks. In addition, extending the effective date for the required use of the State forms will avoid any risk of potential disruptions to a district's policies, procedures and practices that might

result if this requirement were to be made effective in the middle of the 2008-09 school year.

LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment will extend the date for required use of the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice, and does not impose any additional compliance requirements upon rural areas beyond those imposed by federal statutes and regulations.

Section 200.4 was revised to require IEPs developed for the 2011-2012 school year, and thereafter, be on a form prescribed by the Commissioner.

Section 200.5 was revised to require prior written notices (notices of recommendation) and meeting notices issued during the 2011-2012 school year, and thereafter, be on a form prescribed by the Commissioner.

The amendment does not impose any additional professional service requirements on rural areas, beyond those imposed by federal statutes and regulations and State statutes.

COSTS:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date for required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date for required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

The regulations that require the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) as of January 1, 2009 were adopted in September 2007. In response to public comment, the Department is proposing to further extend the effective date by requiring IEPs developed for, and meeting notices and prior written notices (notices of recommendation) issued during, the 2011-12 school year be on forms prescribed by the Commission. Extending the date for the required use of these forms will allow additional time for VESID to work with stakeholders to field check proposed forms and to provide professional development on the new forms. Furthermore, the additional extension should provide the needed time for cost-effective conversion to the State's required forms and for the State to make professional development available through no-cost means such as informational materials, web-conferencing and professional development through its technical assistance networks. In addition, extending the effective date for the required use of the State forms will avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-09 school year.

RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment relates to the provision of special education programs and services to students with disabilities, and is necessary to ensure consistency in procedural safeguards by extending the date for required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting

notice. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Museum Collections Management Policies

I.D. No. EDU-01-09-00004-E

Filing No. 264

Filing Date: 2009-03-19

Effective Date: 2009-03-19

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

Action taken: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided), 217(not subdivided), 233-aa(1), (2) and (5); and L. 2008, ch. 220

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections. The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language

was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a chartered museum or historical society by immediately clarifying the limited circumstances under which an item or material in a collection may be deaccessioned, in order to deter institutions in financial distress in the current fiscal crisis from selling or otherwise disposing of collection items and materials, in a manner inconsistent with accepted museological standards and State law, such as using the proceeds from the deaccessioning for payment of outstanding debt or operating expenses, and to prospectively limit the ability of museums and historical societies to designate a historic building as a collection item, so that institutions in financial distress will not make such designation for the purpose of justifying the sale of other items in their collections in order to pay capital expenses associated with the building.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting, and has now been re-adopted as a second emergency action at the March 2009 Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009. The amendment is not being proposed for adoption as a permanent rule at this time because State Education Department staff are working with the Legislature and with museum constituents to develop revised standards for museum deaccessioning that would be incorporated into proposed legislation applicable to all museums. Once the legislative language is finalized, conforming revisions would need to be made in the language of this proposed rule before it can be made permanent. We do not anticipate adopting the proposed amendment as a permanent rule until after final disposition of the proposed legislation in the 2009 Legislative Session.

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text of emergency rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective March 19, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed May 17, 2009:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the institution by vote conducted on or before December 19, 2008*;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective March 19, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed May 17, 2009:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, *including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision*;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing

items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision*, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, *for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section*, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

(i) *the item or material is not relevant to the mission of the institution;*

(ii) *the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;*

(iii) *the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or*

(iv) *the institution is unable to conserve the item or material in a responsible manner.*

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-01-09-00004-EP, Issue of January 7, 2009. The emergency rule will expire May 17, 2009.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the Chief Administrative Officer of the Department, which is charged with the general management and supervision of all public schools and the educational work of the State.

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

Education Law section 215 authorizes the Regents, the Commissioner, or their representatives, to visit, examine and inspect education corporations and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 216 authorizes the Board of Regents to incorporate educational institutions, including museums and other institutions for the promotion of science, literature, art, history or other department of knowledge, with such powers, privileges and duties, and subject to such limitations and restrictions, as they Regents may prescribe.

Education Law section 217 empowers the Board of Regents to grant a provisional charter to an institution, which shall be replaced by an absolute charter when the conditions for such absolute charter have been fully met.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by clarifying criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(1) the item or material is not relevant to the mission of the institution;

(2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

4. COSTS:

(a) Costs to the State: None.

(b) Costs to local governments: 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 clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to museums and historical societies with collections chartered by the Board of Regents, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession

proceeds, and does not impose any additional paperwork requirements on such institutions.

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards regarding the chartering and registration of museums and historical societies by the Board of Regents.

10. COMPLIANCE SCHEDULE:

The proposed amendment clarifies criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum chartering database as of November 2008), 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 persons per square mile or less.

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

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(1) the item or material is not relevant to the mission of the institution;

(2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

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

3. COMPLIANCE COSTS:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities, and does not impose any additional compliance requirements or costs on such institutions. Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to museum and historical society collections management, it is not feasible to impose a lesser standard on, or otherwise exempt, institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

The State Education Department consulted with the Museum Association of New York in the development of the proposed amendment.

In addition, the Department asked its museum and historical society constituents to comment on the proposed amendment through announcements on web sites, and copies sent to listservs and electronic mailing lists. All areas of the state, including rural areas, received the announcements.

Job Impact Statement

The proposed amendment applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Special Education Programs and Services

I.D. No. EDU-31-08-00014-A

Filing No. 287

Filing Date: 2009-03-24

Effective Date: 2009-04-09

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

Action taken: Amendment of sections 200.4 and 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 4402(1-7), 4403(3) and 4410(13)

Subject: Special education programs and services.

Purpose: To extend date for required use of State forms for IEPs, prior written notice (notice of recommendation) and meeting notice.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. EDU-31-08-00014-P.

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

Revised rule making(s) were previously published in the State Register on October 22, 2008 and January 21, 2009

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Administration of Ability-to-benefit Tests for Purposes of Eligibility for Awards of State Aid

I.D. No. EDU-53-08-00008-A

Filing No. 289

Filing Date: 2009-03-24

Effective Date: 2009-04-08

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

Action taken: Amendment of section 145-2.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided) and 661(4)

Subject: Administration of ability-to-benefit tests for purposes of eligibility for awards of state aid.

Purpose: To clarify the requirements for the independent administration of ability-to-benefit tests.

Text or summary was published in the December 31, 2008 issue of the Register, I.D. No. EDU-53-08-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 473-4921, email: p16education@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Special Education Programs and Services for Students with Disabilities

I.D. No. EDU-14-09-00005-P

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

Proposed Action: Amendment of sections 200.1, 200.2, 200.4, 200.5, 200.6, 200.9 and 200.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 3208(1-5), 3602(i)(2), 3713(1) and (2), 4002(1-3), 4308(3), 4355(3), 4401(2-9), 4402(1-7) and 4410(13); and L. 2008, ch. 323

Subject: Special education programs and services for students with disabilities.

Purpose: To conform Commissioner's Regulations to changes in the federal IDEA regulations and to ch. 323, L. 2008.

Public hearing(s) will be held at: 2:30 p.m.-5:00 p.m., April 27, 2009 at VESID Binghamton District Office, 44 Hawley St., 7th Fl., Binghamton, NY, Rm. Capacity: 30, Directions: <http://www.vesid.nysed.gov/southerntier/directions.htm#binghamton>; 2:30 p.m.-5:00 p.m., May 11, 2009 at East Greenbush Community Library, 10 Community Way, Conference Rm. A & B, East Greenbush, NY, Rm. Capacity: 38, Directions: <http://www.eastgreenbushlibrary.org/about.asp#directions>; 2:30 p.m.-5:00 p.m., May 12, 2009 at VESID Queens District Office, 59-17 Junction Blvd., 20th Fl.*, Corona, NY, Rm. Capacity: 30, Directions: <http://www.vesid.nysed.gov/queens/directions.htm>

* The New York City public hearing will be conducted by video teleconference.

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

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

Substance of proposed rule (Full text is posted at the following State website:

<http://www.vesid.nysed.gov/specialed/timely.htm>): The Commissioner of Education proposes to amend sections 200.1, 200.2, 200.4, 200.5, 200.6, 200.9 and 200.15 of the Commissioner's Regulations, effective July 16, 2009, relating to the provision of special education to students with

disabilities. The following is a summary of the substance of the proposed amendments.

Section 200.1, as amended, makes a technical amendment to the definition of travel training; and adds the definition of declassification support services consistent with the definition that was inadvertently deleted from section 100.2(u) of the Commissioner's Regulations.

Section 200.2, as amended, makes a technical amendment relating to board of education written policies.

Section 200.4, as amended, makes a technical amendment and corrects cross citations relating to declassification support services and requests to the committee on special education (CSE) pursuant to section 4005 of the Education Law; and conforms State regulations to federal requirements relating to participation in regular class.

Section 200.5, as amended, makes a technical amendment relating to State complaint procedures; adds certain cross citations; conforms State regulations to federal requirements relating to parent consent, including revocation of parent consent for special education and related services, and meeting notice; and repeals language in the prior notice requirements relating to the provision of a free appropriate public education after graduation with the receipt of a local high school or Regents diploma to be consistent with Education Law.

Section 200.6, as amended, corrects a cross citation relating to staffing requirements.

Section 200.9, as amended, makes a technical amendment relating to financial reporting requirements for approved programs.

Section 200.15, as amended, makes a technical amendment relating to personnel qualifications and conforms State regulations to Chapter 323 of the New York State Laws of 2008 relating to procedures for prevention of abuse, maltreatment or neglect of students in residential placements.

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Rebecca H. Cort, Deputy Commissioner VESID, State Education Department, Room 1606, One Commerce Plaza, Albany, NY 12234, (518) 473-2714, email: rcort@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 101 of the Education Law continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner 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 authorizes the Regents and Commissioner to adopt rules and regulations to carry out State laws regarding education.

Education Law section 3208(1-5) provides for attendance and student mental/physical examination requirements.

Education Law section 3602 establishes the apportionment of public monies to school districts employing eight or more teachers. Section 3602(i)(2) defines "declassification pupils" and declassification support services.

Education Law section 3713(1) and (2) authorizes the State and districts to accept federal law making appropriations for education.

Education Law section 4002 establishes responsibilities for education of students in child-care institutions.

Education Law sections 4308(3) and 4355(3) authorize Commissioner's regulations regarding admission to the State School for the Blind and State School for the Deaf.

Education Law section 4401 authorizes Commissioner to approve private day and residential programs serving students with disabilities.

Education Law section 4402 establishes district's duties regarding education of students with disabilities.

Education Law section 4403 outlines Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in its best interests.

Education Law section 4410 outlines special education services and programs for preschool children with disabilities. Section 4410(13) authorizes Commissioner to adopt regulations.

Chapter 323 of the Laws of 2008 establish procedures for the prevention and reporting of abuse, maltreatment or neglect of children in residential care.

LEGISLATIVE OBJECTIVES:

The amendments carry out the legislative objectives in the foremen-

tioned statutes to ensure that students with disabilities are provided a free appropriate public education consistent with federal law and regulations.

NEEDS AND BENEFITS:

The amendments are necessary to conform the Commissioner's Regulations to the amended federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and Chapter 323 of the New York State (NYS) Laws of 2008, and to make certain technical amendments, including correction of cross citations.

Final regulations to amend 34 CFR Part 300 were issued in December 2008 and became effective December 31, 2008. The State must amend its regulations to conform to federal requirements as part of its eligibility for federal funding.

Chapter 323 of the Laws of 2008 amended NYS Social Services Law and Mental Hygiene Law relating to the requirements for the protection of children in residential facilities from abuse and neglect and became effective on January 17, 2009. The legislative changes apply to all approved special education in-state residential programs, Special Act School Districts, State-operated schools, and State-supported schools with a residential component and enhance the protections for children by amending and adding definitions, establishing procedures for investigation of allegations of abuse and neglect, and strengthening consequences for staff whose actions are likely to result in harm to a child.

COSTS:

a. Costs to State government: None

b. Costs to local governments: None

c. Costs to regulated parties: None

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in federal IDEA regulations and NYS Social Services Law and Mental Hygiene Law; and to make certain technical amendments, including correction of cross citations, and do not impose any additional costs beyond those imposed by federal and State statutes and regulations.

LOCAL GOVERNMENT MANDATES:

The amendments are necessary to conform the Commissioner's Regulations to recent changes in the federal IDEA regulations and NYS Social Services Law and Mental Hygiene Law, and do not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations.

Section 200.1, as amended, makes a technical amendment to the definition of travel training; and adds the definition of declassification support services consistent with the definition of such term in Education Law.

Section 200.2, as amended, makes a technical amendment relating to board of education written policies.

Section 200.4, as amended, makes a technical amendment and corrects cross citations relating to declassification support services and requests to the committee on special education (CSE) pursuant to section 4005 of the Education Law; and conforms State regulations to federal requirements relating to participation in regular class.

Section 200.5, as amended, makes a technical amendment relating to State complaint procedures; adds certain cross citations; conforms State regulations to federal requirements relating to parent consent, including revocation of parent consent for special education and related services, and meeting notice; and repeals language in the prior notice requirements relating to the provision of a free appropriate public education after graduation with the receipt of a local high school or Regents diploma to be consistent with Education Law.

Section 200.6, as amended, corrects a cross citation relating to staffing requirements.

Section 200.9, as amended, makes a technical amendment relating to financial reporting requirements for approved programs.

Section 200.15, as amended, makes a technical amendment relating to personnel qualifications and conforms State regulations to Chapter 323 of the New York State Laws of 2008 relating to procedures for prevention of abuse, maltreatment or neglect of students in residential placements.

PAPERWORK:

Consistent with federal requirements, when a parent of a student revokes consent in writing for the continued provision of special education programs and services, the proposed rule would require school districts to provide prior written notice before ceasing the provision of special education programs and services.

Consistent with the requirements of Chapter 323 of the Laws of 2008, the proposed rule would add reporting requirements when there is a suspected case of child abuse, maltreatment or neglect of a child in residential care.

DUPLICATION:

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

ALTERNATIVES:

The amendments are necessary to conform the Commissioner's Regulations to recent changes in State statute and the federal IDEA regulations, and there are no significant alternatives and none were considered.

FEDERAL STANDARDS:

The amendments are necessary to conform the Commissioner's Regulations to recent changes in the federal IDEA regulations (34 CFR Part 300) and State statute (as amended by Chapter 323 of the Laws of 2008) and do not exceed any minimum federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the amendments by their effective date.

Regulatory Flexibility Analysis**Small Businesses:**

The amendments are necessary to conform the Commissioner's Regulations to the amended federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA), which became effective December 31, 2008, and Chapter 323 of the New York State (NYS) Laws of 2008, which became effective January 17, 2009; and to make certain technical amendments, including correction of cross citations, and do not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

The proposed amendments apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools.

COMPLIANCE REQUIREMENTS:

The amendments are necessary to conform the Commissioner's Regulations to the amended federal regulations (34 CFR Part 300) that implement the IDEA, which became effective December 31, 2008, and Chapter 323 of the NYS Laws of 2008, which became effective January 17, 2009, and do not impose any additional compliance requirements upon local governments beyond those imposed by federal statutes and regulations.

Section 200.1, as amended, makes a technical amendment to the definition of travel training; and adds the definition of declassification support services consistent with the definition that was inadvertently deleted from section 100.2(u) of the Commissioner's Regulations.

Section 200.2, as amended, makes a technical amendment relating to board of education written policies.

Section 200.4, as amended, makes a technical amendment and corrects cross citations relating to declassification support services and requests to the committee on special education (CSE) pursuant to section 4005 of the Education Law; and conforms State regulations to federal requirements relating to participation in regular class.

Section 200.5, as amended, makes a technical amendment relating to State complaint procedures; adds certain cross citations; conforms State regulations to federal requirements relating to parent consent, including revocation of parent consent for special education and related services, and meeting notice; and repeals language in the prior notice requirements relating to the provision of a free appropriate public education after graduation with the receipt of a local high school or Regents diploma to be consistent with Education Law.

Section 200.6, as amended, corrects a cross citation relating to staffing requirements.

Section 200.9, as amended, makes a technical amendment relating to financial reporting requirements for approved programs.

Section 200.15, as amended, makes a technical amendment relating to personnel qualifications and conforms State regulations to Chapter 323 of the New York State Laws of 2008 relating to procedures for prevention of abuse, maltreatment or neglect of students in residential placements.

PROFESSIONAL SERVICES:

The amendments are necessary to conform the Commissioner's Regulations to the amended federal regulations (34 CFR Part 300) that implement IDEA, which became effective December 31, 2008, and Chapter 323 of the NYS Laws of 2008, which became effective January 17, 2009, and do not impose any additional professional service requirements on local governments beyond those imposed by such federal statutes and regulations and State statutes.

COMPLIANCE COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in federal IDEA regulations and NYS Social Services Law and Mental Hygiene Law; and to make certain technical amendments, including correction of cross citations. School districts and other local educational agencies (LEAs) are required to comply with IDEA statutes and regulations as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendments do not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

MINIMIZING ADVERSE IMPACT:

The amendments are necessary to conform the Commissioner's Regulations to Chapter 323 of the Laws of 2008 and recent changes in the federal IDEA regulations.

School districts and other LEAs are required to comply with IDEA statutes and regulations as a condition to their receipt of federal funding. The proposed conforming amendments have been carefully drafted to meet federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendments have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. The State Education Department will be conducting public hearings on the proposed amendments in April and/or May 2009.

Rural Area Flexibility Analysis**TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

The proposed amendments will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The amendments are necessary to conform the Commissioner's Regulations to the amended federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA), which became effective December 31, 2008, and Chapter 323 of the New York State (NYS) Laws of 2008, which became effective January 17, 2009; and to make certain technical amendments, including correction of cross citations, and do not impose any additional compliance requirements upon rural areas beyond those imposed by federal statutes and regulations and State law.

Section 200.1, as amended, makes a technical amendment to the definition of travel training; and adds the definition of declassification support services consistent with the statutory definition of such term.

Section 200.2, as amended, makes a technical amendment relating to board of education written policies.

Section 200.4, as amended, makes a technical amendment and corrects cross citations relating to declassification support services and requests to the committee on special education (CSE) pursuant to section 4005 of the Education Law; and conforms State regulations to federal requirements relating to participation in regular class.

Section 200.5, as amended, makes a technical amendment relating to State complaint procedures; adds certain cross citations; conforms State regulations to federal requirements relating to parent consent, including revocation of parent consent for special education and related services, and meeting notice; and repeals language in the prior notice requirements relating to the provision of a free appropriate public education after graduation with the receipt of a local high school or Regents diploma to be consistent with Education Law.

Section 200.6, as amended, corrects a cross citation relating to staffing requirements.

Section 200.9, as amended, makes a technical amendment relating to financial reporting requirements for approved programs.

Section 200.15, as amended, makes a technical amendment relating to personnel qualifications and conforms State regulations to Chapter 323 of

the New York State Laws of 2008 relating to procedures for prevention of abuse, maltreatment or neglect of students in residential placements.

The amendments do not impose any additional professional service requirements on rural areas, beyond those imposed by such federal statutes and regulations and State statutes.

COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in federal IDEA regulations and NYS Social Services Law and Mental Hygiene Law; and to make certain technical amendments, including correction of cross citations. School districts and other local educational agencies (LEAs) are required to comply with IDEA statutes and regulations as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

MINIMIZING ADVERSE IMPACT:

The amendments are necessary to conform the Commissioner's Regulations to recent changes in the federal IDEA regulations and Chapter 323 of the Laws of 2008.

School districts and other LEAs are required to comply with IDEA statutes and regulations as a condition to their receipt of federal funding. The proposed conforming amendments have been carefully drafted to meet federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas. The State Education Department will be conducting public hearings on the proposed rule.

Job Impact Statement

The proposed rule is necessary in order to ensure compliance with federal regulations and State law relating to the education of students with disabilities, ages 3-21; and to make certain technical amendments, including correction of cross citations. The proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements For, and Processing Of, Teaching Certificates

I.D. No. EDU-14-09-00006-P

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

Proposed Action: Amendment of sections 80-1.2, 80-1.6, 80-1.8 and 80-5.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210, 212, 305, 3001, 3003, 3004, 3006, 3007, 3009 and 3604

Subject: Requirements for, and processing of, teaching certificates.

Purpose: Streamline certain aspects of certificate evaluation and processing.

Text of proposed rule: 1. Section 80-1.2 of the Regulations of the Commissioner of Education is amended, effective July 16, 2009, as follows:

Section 80-1.2 [Certificates] *Applications and certificates*, dates of issuance.

(a) [Certificates issued pursuant to the provisions of this Part shall date from the first day of either February or September in the year of issuance.] *Applications*.

(1) *All applications submitted to the commissioner on or after September 1, 2009 for certificates issued pursuant to the provisions of this Part shall remain in active status for three years from the date of receipt of such application. If the candidate fails to complete all requirements for such certification within three years from the date of receipt of such application, the application shall be deemed denied by the commissioner. If the candidate subsequently wishes to re-apply for*

such certification, the candidate shall submit to the commissioner a new application with the required documentation and the appropriate fee prescribed under Section 3006 of the Education Law.

(2) *All applications submitted to the commissioner after September 1, 2009 for certificates in the classroom teaching service, school leadership or pupil personnel through individual evaluation or reciprocity under this Part shall include a transcript from each institution of higher education that the candidate attended. Upon receipt of such application, the commissioner shall provide a written or electronic evaluation to the candidate of his/her credentials and shall notify the candidate, in writing or electronically, if there are any remaining deficiencies in the candidate's application for certification through individual evaluation or reciprocity. If the candidate fails to satisfy any remaining deficiencies in his/her application within three years from the date of receipt of such application, the application shall be deemed denied by the commissioner. A candidate's application shall also be denied by the commissioner if the candidate submits additional documentation to correct any deficiencies in his/her application after the first evaluation and a second evaluation reveals that the application together with the additional documentation continues to be deficient and fails to meet the requirements for certification, as prescribed in this Part. If the candidate subsequently wishes to re-apply for such certification, the candidate shall submit to the commissioner a new application with any required documentation to satisfy any remaining deficiencies in such application and the appropriate fee as prescribed under Section 3006 of the Education Law.*

(b) *Certificates, dates of issuance.*

(1) *Upon application, the commissioner shall issue certificates in the forms and titles for which the candidate qualifies. Such certificates may be issued in electronic and/or paper format.*

(2) *Certificates issued pursuant to the provisions of this Part shall date from the first day of either February or September in the year of issuance.*

[(c)] (3) *The commissioner shall not issue provisional certificates valid for the classroom teaching service with an effective date that begins after February 1, 2004, unless otherwise specifically prescribed in this Part. The commissioner may extend the effective date of a provisional certificate after February 1, 2004, pursuant to the requirements of section 80-1.6 of this Subpart.*

[(d)] (4) *The commissioner shall issue initial and professional teachers' certificates valid for the classroom teaching service beginning with an effective date of September 1, 2004, except that the commissioner may continue to issue provisional and permanent teachers' certificates valid for classroom teaching service as specifically prescribed in this Part.*

[(e)] (5) *The commissioner shall not issue temporary licenses for employment as teaching assistants with an effective date that begins after February 1, 2004.*

[(f)] (6) *The commissioner shall issue level I teaching assistant certificates, level II teaching assistant certificates, and level III teaching assistant certificates, and pre-professional teaching assistant certificates beginning with an effective date of September 1, 2004.*

2. Section 80-1.6 of the Regulations of the Commissioner of Education is amended, effective July 16, 2009, as follows:

Section 80-1.6 Extensions of time validity of certificates.

(a) *Subject to the limitation provided in subdivision (d) of this section, the time validity of an expired provisional, initial or transitional certificate may be extended for a period not to exceed two years from the expiration date of such certificate, except as provided in subdivisions (b) and (c) of this section, upon application by the holder of a teaching certificate:*

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .

(6) *[for the holder of a provisional certificate only,] for a candidate who has been unable to secure employment as a teacher or who has been pursuing a career other than teaching.*

(b) . . .

(c) . . .

(d) *The commissioner will only extend the time validity of an expired provisional certificate under this section if the holder of such provisional certificate submits evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate, when a content specialty test(s) is required.*

3. Section 80-1.8 of the Regulations of the Commissioner of Education is amended, effective July 16, 2009, as follows:

Section 80-1.8 Reissuance of an initial certificate.

(a) The holder of an initial certificate whose certificate has expired shall be reissued an initial certificate on one occasion only, for a period of [three] *five* years from the date of reissuance, provided that the candidate has met the requirements in subdivision (b) of this section. The time validity of such reissued initial certificate shall not be extended, pursuant to section 80-1.6 of this Subpart.

(b) [The] *Any candidate whose certificate has been expired for two or more years at the time of application for the reissuance* shall meet the requirements in [each] *both* of the following paragraphs:

[(1) The candidate has substantiated by adequate documentary evidence submitted to the department that he or she has been unable to secure employment as a classroom teacher, which has resulted in the candidate not meeting the requirements for the professional certificate.]

[(2)] (1) The candidate shall successfully complete *75 clock hours of acceptable professional development* [at a rate of one and one-half clock hours per month, computed for each month beginning on the date of the issuance of the original initial certificate or the issuance of an extension thereof, and ending on the date the candidate submits his or her application to the department for the reissued initial certificate, up to a maximum of 75 clock hours. The professional development shall be completed during such computation period. In the case of a candidate required to complete 75 clock hours of professional development, 45 of such clock hours shall be completed] within one year [prior to the candidate's] *of applying to the department for the reissued initial certificate. The definition of acceptable professional development and the measurement of professional development study shall be that prescribed in section 80-3.6 of this Part.*

[(3)] (2) The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination [liberal arts and sciences test, written assessment of teaching skills and] *content specialty test(s) in the area [of] required for the certificate sought or the New York State assessment for school building leadership required for a certificate as a school building leader, which shall be taken within one year [prior to] of the candidate's applying to the department for the reissuance of the initial certificate.*

4. Section 80-5.9 of the Regulations of the Commissioner of Education is amended, effective July 16, 2009, as follows:

Section 80-5.9 Internship certificate.

(a) A student in a registered or approved graduate program of teacher education which includes an internship experience(s) and who has completed at least one-half of the semester hour requirement for the program may, at the request of the institution, be issued an internship certificate [without fee] *for a fee of \$50.*

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 473-2921, email: 518 473-4921

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of P16, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 474-3862, email: p16education@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.

Section 210 of the Education Law authorizes the Department to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Section 212 of the Education Law authorizes the Department to fix, in regulation, fees for certificates that are not otherwise provided in law.

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

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

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

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

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment will carry out the objectives of the above referenced statutes by revising requirements for teacher certification in the areas of certification processing, fees for internship certificates and the form of certificates.

3. NEEDS AND BENEFITS:

The proposed amendment is needed to streamline certificate evaluations and the processing of certificates under Part 80 of the Regulations of the Commissioner of Education, in light of the reduction in available resources to the State Education Department to perform these functions, in order to continue to provide core teacher certification services to school districts and candidates seeking a certificate in teaching. First, the proposed amendment imposes reasonable limits on transcript evaluation by limiting the length of time an application for a certificate will remain in active status to three years and limiting the number of evaluations an applicant can receive to two. Additional evaluations will require submission of a new application and fee. Second, the proposed amendment imposes a \$50 fee for the issuance of an internship certificate, the same fee that the Department collects for all other college-recommended certificates. Third, the proposed amendment specifies that certificates may be issued in electronic and/or paper format, in order to implement a policy change from the issuance of time limited certificates, in favor of a web based verification system. Fourth, the proposed amendment will only allow a holder of a provisional certificate to qualify for a time extension if he/she has passed the appropriate New York State Teacher Certification Examination content specialty test(s). The proposed amendment also streamlines the requirements for the reissuance of an initial certificate by requiring passage of the applicable Content Specialty Test(s) only if the certificate has been expired for more than two years, eliminates the requirement that the teacher submit evidence of being unable to secure a teaching position to qualify, establishes the a uniform professional development requirement of 75 hours and requires that a candidate complete the 75 hours of professional development within one year of applying to the department for the reissued initial certificate.

The proposed amendment is needed to streamline the certification process which would in turn, allow evaluation staff to work on more critical evaluation functions and reduce the processing time for applicants. It is estimated that the proposed amendment would yield an equivalent of over five full time employees, who could be reassigned to high priority tasks. In addition, the proposed changes would result in an estimated \$380,000 in new fees and cost savings to the State Education Department.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. In fact, the State Education Department would realize a savings of over five full-time employees, who could be reassigned to high priority tasks in teacher certification processing and an increase of \$380,000 in savings and additional fees.

(b) Cost to local government. The amendment does not impose ad-

ditional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will impose a \$50 fee on applicants for an internship certificate, enrolled in graduate teacher education programs. This is the same fee collected for all other college-recommended certificates pursuant to section 3006 of the Education Law.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to amend certain provisions related to the requirements for and processing of teaching certificates. The proposed changes would streamline certificate evaluation and processing in light of reduced resources available to the State Education Department, in order to continue to provide core teacher certification services to school districts and applicants. The amendment does not establish any requirements for small businesses or local governments, including school districts or BOCES.

The amendment will not impose any adverse economic impact, recordkeeping, reporting, or other compliance requirements on small businesses or local governments, including school districts or BOCES. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect any candidates seeking a certificate in teaching in all parts of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to amend certain provisions related to the requirements for the processing of teaching certificates. The proposed amendment would streamline certificate evaluation and processing, in light of the reduction in available resources to the State Education Department in order to continue to provide core teacher certification services to school districts and applicants.

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply.

3. Costs:

The amendment imposes a \$50 fee on graduate students applying for an internship certificate from the Department. This is the same fee collected for all college-recommended certificates, as established in section 3006 of the Education Law.

4. Minimizing adverse impact:

The amendment establishes requirements for teacher certification and changes certain processing and evaluation processes within the State Education Department. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Profes-

sional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES. Comments were also solicited from the School Administrators Association of New York State, New York State United Teachers, New York State Council of School Superintendents, New York State School Boards Association, and New York State Association of School Personnel Administrators. We also solicited comments from the Rural Advisory Committee, which has representatives who live and/or work in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to amend certain provisions related to the processing of teaching certificates. The proposed amendment is needed to streamline certificate evaluation and processing, in light of the reduction in available resources to the State Education Department to perform these functions in order to continue to provide core teacher certification services to school districts and teacher applicants and to prevent lengthening cycle time and delays for applicants and schools.

Because it is evident from the nature of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supplementary Bilingual Education Extension for Certificates in Classroom Teaching Service and Pupil Personnel Services

I.D. No. EDU-14-09-00007-P

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

Proposed Action: Amendment of sections 80-2.9, 80-4.3, 80-5.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2) and (7), 3001(2), 3004(1) and 3006(1)(b)

Subject: Supplementary bilingual education extension for certificates in classroom teaching service and pupil personnel services.

Purpose: Establish a supplementary bilingual education extension, to provide bilingual instruction/service in demonstrated shortage area.

Text of proposed rule: 1. A new paragraph (6) is added to subdivision (a) of Section 80-2.9 of the Regulations of the Commissioner of Education, effective July 16, 2009, as follows:

(6) *Supplementary bilingual education extension for certificates in pupil personnel services.*

(i) *Purpose.* The purpose of a supplementary bilingual education extension is to authorize a pupil personnel service professional who is currently certified in a title in the pupil personnel service to work as a bilingual pupil personnel service worker where there is a demonstrated shortage, while the pupil personnel service professional is in a matriculated program at an institution of higher education leading to an extension in bilingual education.

(ii) *Limitations.* The supplementary bilingual extension shall be valid for three years from its effective date and shall not be renewable. A supplementary bilingual education extension shall also be limited to employment with an employing entity.

(iii) *Requirements.* To be eligible for a supplementary bilingual education extension, a candidate shall meet the following requirements:

(a) *Application.* The candidate shall apply for the supplementary bilingual education extension and upon application qualify for the supplementary bilingual education extension.

(b) *Certification.* The candidate shall hold a valid provisional or permanent certificate in a pupil personnel service identified in Subpart 80-2 of this Part.

(c) *The candidate shall be matriculated in a registered program leading to a bilingual education extension, provided that such program must require the candidate to pass an assessment of proficiency in the language of the bilingual education extension sought as a condition for entry into the program.*

(d) *Education.* The candidate shall have completed coursework as prescribed in this subparagraph. The candidate shall have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course submitted to meet the coursework requirements of this subparagraph.

(1) *The candidate shall have completed three semester hours in bilingual education as prescribed in the requirements for a bilingual education extension, set forth in section 80-2.9 of this Part, including study in theories of bilingual education and multicultural perspectives.*

(2) *A statement shall be submitted by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified pupil personnel professionals certifying that:*

(i) *the employing entity seeks to employ the candidate in a position in a certificate title in the pupil personnel service with a demonstrated shortage of certified pupil personnel professionals with an extension in bilingual education;*

(ii) *the employing entity will require, as a condition of employment under the supplementary bilingual education extension, the candidate's matriculation in a program at an institution of higher education leading to a bilingual extension; and*

(iii) *the employing entity will provide appropriate support to the candidate undertaking an assignment with a supplementary bilingual education extension to ensure the maintenance of quality instruction for such candidate.*

2. A new paragraph (4) is added to subdivision (a) of Section 80-4.3 of the Regulations of the Commissioner of Education, effective July 16, 2009, as follows:

(4) *Supplementary bilingual education extension for certificates in the classroom teaching service.*

(i) *Purpose. The purpose of a supplementary bilingual education extension is to authorize a teacher who is currently certified in a title in the classroom teaching service to teach bilingual English language learners where there is a demonstrated shortage, while the teacher is matriculated in a program at an institution of higher education leading to an extension in bilingual education.*

(ii) *Limitations. The supplementary bilingual extension shall be valid for three years from its effective date and shall not be renewable. A supplementary bilingual education extension shall also be limited to employment with an employing entity.*

(iii) *Requirements. To be eligible for a supplementary bilingual education extension, a candidate shall meet the following requirements:*

(a) *Application. The candidate shall apply for the supplementary bilingual education extension and upon application qualify for the supplementary bilingual education extension.*

(b) *Certification. The candidate shall hold a valid provisional, initial, permanent, or professional certificate in a title in the classroom teaching service identified in Subpart 80-2 or 80-3 of this Part.*

(c) *The candidate shall be matriculated in a registered program leading to a bilingual extension of a certificate as a teacher in the classroom teaching service, as prescribed in section 52.21(b)(4), provided that such program must require the candidate to pass an assessment of proficiency in the language of the bilingual education extension sought as a condition for entry into the program.*

(d) *Education. The candidate shall have completed coursework as prescribed in this subparagraph. The candidate shall have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course submitted to meet the coursework requirements of this subparagraph.*

(1) *The candidate shall have completed three semester hours in bilingual education as prescribed in the requirements for a bilingual extension, set forth in section 80-4.3 of this Part, including study in theories of bilingual education and multicultural perspectives.*

(2) *A statement shall be submitted by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:*

(i) *the employing entity seeks to employ the candidate in a position in a certificate title in the classroom teaching service with a demonstrated shortage of certified teachers with an extension in bilingual education;*

(ii) *the employing entity will require, as a condition of employment under the supplementary condition bilingual extension, the candidate's matriculation in a program at an institution of higher education leading to a bilingual extension; and*

(iii) *the employing entity will provide appropriate support to the candidate undertaking an assignment with the supplementary bilingual education extension to ensure the maintenance of quality instruction for such candidate.*

3. Subdivision (c) of section 80-5.18 of the Regulations of the Commissioner of Education is amended, effective July 16, 2009, as follows:

(c) *Requirements. To be eligible for a supplementary certificate, a candidate shall meet the requirements in each of the following paragraphs:*

(1) *Application. The candidate shall apply for the supplementary certificate [by September 1, 2009,] and upon application qualify for the certificate, in a certificate title in the classroom teacher service for which there is a demonstrated shortage of certified teachers as determined by the department.*

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, New York State Education Department, 89 Washington Avenue, Room 148, , Albany, New York 12234, (518) 473-4921, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of P16, New York State Education Department, 2nd Floor, West Wing, Education Building, Albany, NY 12234, (518) 474-3862, email: p16education@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 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

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

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

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

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment will carry out the objectives of the above referenced statutes by establishing a supplementary bilingual education extension to enable a certified teacher or pupil personnel service professional to provide bilingual instruction or services, in a demonstrated shortage area, while in a matriculated program at an institution of higher education leading to an extension in bilingual education.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish a supplementary bilingual education extension to enable a certified teacher or pupil personnel service professional to provide bilingual instruction or services, in a demonstrated shortage area, while the teacher or pupil personnel service professional completes the remaining course requirements necessary to qualify for a bilingual extension.

The proposed amendment is needed to facilitate the State's ability to address persistent shortages of certified teachers and pupil personnel service professionals (such as school psychologists, school counselors and school social workers) who are qualified to provide bilingual instruction and services. The amendment creates a practical mechanism for certified teachers and pupil personnel professionals to earn this additional credential, while continuing to be employed as a classroom teacher or pupil personnel service provider. The amendment prescribes clearly defined standards to ensure the quality of the education of teachers and pupil personnel professionals certified in bilingual education. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for bilingual instruction and support services in the State's schools.

The supplementary bilingual education extension will be valid for three years from its effective date and will not be renewable. It will be limited to employment with an employing entity.

Due to continuing shortages of classroom teachers in certain certificate titles (including but not limited to mathematics, the sciences and special education) and in certain geographic areas, the proposed amendment also removes the sunset date of September 1, 2009 for supplementary certifi-

cates, which authorizes a teacher certified in the classroom teaching service to teach in a different title when there is a demonstrated shortage of certified teachers, while the teacher is engaged in study at an institution of higher education to complete any necessary requirements to qualify for the new certificate.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. A candidate seeking a supplementary bilingual education extension will be required to pay a \$100 application fee.

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

5. LOCAL GOVERNMENT MANDATES:

The amendment will provide New York State school districts and BOCES with a mechanism to employ certified classroom teachers and pupil personnel professionals to provide bilingual instruction or services, not otherwise available. School districts and BOCES that wish to employ a teacher under the supplementary bilingual education extension must certify to the State Education Department that the district wants to employ the candidate in a position for which the candidate would need the bilingual extension to qualify, that it will provide mentoring support in the new area, and that it will require, as a condition of employment that the candidate be matriculated in a college program leading to the bilingual extension.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking the supplementary bilingual education extension must provide evidence of being matriculated in a college program leading to the bilingual extension, proof of certification in the classroom teaching or pupil personnel service, and evidence that the candidate meets the prescribed education requirements. The employing school district or BOCES will be required to certify that the district wants to employ the candidate in a position for which the candidate would need the bilingual extension to qualify, that it will provide mentoring support in the new area, and that it will make it a condition of employment that the candidate be matriculated in a college program leading to the bilingual extension.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that address extensions in bilingual education.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

The proposed amendment establishes requirements for extensions in the classroom teaching service and pupil personnel service that would qualify an individual to provide bilingual education services in the public schools of New York State. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire a teacher for employment under a supplementary bilingual education extension.

2. Compliance requirements:

The purpose of the proposed amendment is to establish a supplementary bilingual education extension to enable a certified teacher or pupil personnel professional, upon meeting prescribed requirements, to provide bilingual instruction, in a demonstrated shortage area.

The amendment will provide New York State school districts and BOCES with a mechanism to employ certified classroom teachers and pupil personnel professionals to provide bilingual instruction or services, not otherwise available. School districts and BOCES that wish to employ a teacher with the supplementary bilingual education extension must certify to the State Education Department that the district wants to employ the candidate in a position for which the candidate would need the bilingual extension to qualify, that it will provide support in the new area, and that the district or BOCES will make it a condition of employment that the candidate be matriculated in a college program leading to the bilingual extension.

Due to continuing shortages of classroom teachers in certain certificate titles (including but not limited to mathematics, the sciences and special education) and in certain geographic areas, the proposed amendment also removes the sunset date of September 1, 2009 for supplementary certificates, which authorizes a teacher certified in the classroom teaching service to teach in a different title when there is a demonstrated shortage of certified teachers, while the teacher is engaged in study at an institution of higher education to complete any necessary requirements to qualify for the new certificate.

3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply.

4. Compliance costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a supplementary bilingual education extension. However, the candidate will be required to pay an application fee of \$100 for the supplementary bilingual education extension.

5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

6. Minimizing adverse impact:

The amendment establishes requirements for the issuance of a supplementary bilingual education extension. The State Education Department does not believe that establishing different standards for local governments is warranted. A uniform standard ensures the quality of the State's teaching workforce.

7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES. Comments were also solicited from the directors of the Bilingual Education technical Assistance Centers at one of their regular meetings. The group expressed support for the creation of the supplementary bilingual education extension.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect certified classroom teachers and pupil personnel professionals in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to establish a supplementary bilingual education extension to enable a certified teacher or pupil personnel professional, upon meeting prescribed requirements, to provide bilingual instruction, in a demonstrated shortage area.

The amendment will provide New York State school districts and BOCES with a mechanism to employ certified classroom teachers and pupil personnel professionals to provide bilingual instruction or services, not otherwise available. School districts and BOCES that wish to employ a teacher with the supplementary bilingual education extension must certify to the State Education Department that the district wants to employ the candidate in a position for which the candidate would need the bilingual extension to qualify, that it will provide mentoring support in the new area, and that the district or BOCES will make it a condition of employment that the candidate be matriculated in a college program leading to the bilingual extension.

Due to continuing shortages of classroom teachers in certain certificate titles (including but not limited to mathematics, the sciences and special education) and in certain geographic areas, the proposed amendment also

removes the sunset date of September 1, 2009 for supplementary certificates, which authorizes a teacher certified in the classroom teaching service to teach in a different title when there is a demonstrated shortage of certified teachers, while the teacher is engaged in study at an institution of higher education to complete any necessary requirements to qualify for the new certificate.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply, other than educational services needed to complete college coursework for the supplementary bilingual education extension.

3. Costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a supplementary bilingual education extension. However, the candidate will be required to pay an application fee of \$100 for the supplementary bilingual education extension.

4. Minimizing adverse impact:

The amendment establishes requirements for the issuance of a supplementary bilingual education extension. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES. Comments were also solicited from the directors of the Bilingual Education Technical Assistance Centers at one of their regular meetings. The group expressed support for the creation of the supplementary bilingual education extension.

Job Impact Statement

The proposed amendment establishes requirements for the issuance of a supplementary bilingual education extension, authorizing a certified classroom teacher or pupil personnel service provider to provide bilingual instruction or services for up to three years while the individual completes a registered college program leading to a bilingual extension. The proposed amendment is needed to increase the supply of teachers and pupil personnel service professionals who are certified and qualified to provide services in bilingual education, which has a demonstrated shortage area.

Due to continuing shortages of classroom teachers in certain certificate titles (including but not limited to mathematics, the sciences and special education) and in certain geographic areas, the proposed amendment also removes the sunset date of September 1, 2009 for supplementary certificates, which authorizes a teacher certified in the classroom teaching service to teach in a different title when there is a demonstrated shortage of certified teachers, while the teacher is engaged in study at an institution of higher education to complete any necessary requirements to qualify for the new certificate.

Because it is evident from the nature of the rule that it will have no impact on the number of jobs or the number of employment opportunities in teaching or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

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

Superintendents' Conference Days

I.D. No. EDU-14-09-00008-P

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

Proposed Action: Amendment of section 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3604(8)

Subject: Superintendents' conference days.

Purpose: Extend for 4 years provision allowing use of up to two superintendents' conference days for teacher rating of State assessments.

Text of proposed rule: Subdivision (f) of section 175.5 of the Regulations of the Commissioner of Education is amended, effective July 16, 2009, as follows:

(f) Use of superintendents' conference days.

(1) . . .

(2) . . .

(3) . . .

(4) Notwithstanding the provisions of paragraph (1) of this subdivision, during the period commencing on September 29, 2005 and ending on June 30, [2009] 2013, a school district may elect to use up to two of its superintendents' conference days in each school year for teacher rating of State assessments, including but not limited to assessments required under the federal No Child Left Behind Act of 2001 (Public Law section 107-110), which rating activities shall constitute staff development relating to implementation of the new high learning standards and assessments as authorized by section 3604(8) of the Education Law.

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 486-1713, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Comm of Educ. P-16, State Education Department, State Education Building Annex, Room 875, 89 Washington Avenue, Albany, NY 12234, (518) 474-5915, 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 authorizes the Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 3604(8) requires the Commissioner to specify in regulations the acceptable use of superintendents' conference days by school districts and boards of cooperative educational services to satisfy a deficiency in the length of public school sessions for the instruction of pupils.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority of the Commissioner to specify the acceptable use of superintendents' conference days.

NEEDS AND BENEFITS:

Section 175.5(f) of the Regulations of the Commissioner specifies the appropriate use of staff development activities by school districts to advance implementation of the State learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment would extend for four years, to June 30, 2013, the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including including grades 3-8 assessments required under the federal No Child Left Behind Act of 2001. Such training enables new teachers to better understand the State learning standards and assessments, and for experienced teachers to update their knowledge regarding the standards and assessments, and therefore constitutes permissible staff development activities relating to implementation of the new high learning standards and assessments, as authorized by Education Law section 3604(8).

The proposed amendment will continue to provide school districts with additional flexibility and discretion to use this staff development function to fulfill their State test scoring requirements while minimizing impact on student instructional time. As required by Chapter 57 of the Laws of 2007, the Regents have adopted a schedule for the review of the ELA standards. The projected timeline for the adoption of the revised ELA standards is scheduled for 2009-10. In light this, it is imperative that teachers receive the necessary training that will enable them to better understand the revised standards, which are the basis for the assessments they will be responsible for rating. In addition to the new set of revised ELA standards, the Board of Regents is considering changes to the current testing policy. This will also require teacher training, particularly on the rubrics that will be used in rating the required State assessments. The staff development activities on

standards and assessments, provided during the two proposed Superintendents' conference days will be consistent with the provisions authorized by Section 3604(8) of the Education Law.

COSTS:

- (a) Costs to the State: 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.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility on school districts or other local governments.

PAPERWORK:

The proposed amendment imposes no new or additional paperwork requirements.

DUPLICATION:

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

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

The proposed amendment continues to provide flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment extends for four years the regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. Since the proposed amendment does not impose any requirements on school districts, there are no compliance issues or schedules.

Regulatory Flexibility Analysis**Small Businesses:**

The proposed amendment relates to school districts' use of superintendents' conference days and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. The proposed amendment extends for four years the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:**EFFECT OF RULE:**

The proposed amendment applies to all public school districts and boards of cooperative educational services (BOCES) in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional reporting, record keeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment extends for four years the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on local governments.

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on local governments. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment extends for four years the regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

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 school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional reporting, record keeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment extends for four years the provision in section 175.5(f) of the Commissioner's Regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. The proposed amendment does not impose any additional professional services requirements on regulated parties.

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on rural areas.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on rural areas. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment extends for four years the regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment to extend the regulation for four years 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 the use of superintendents' conference days by school districts and boards of cooperative educational services and will not have an adverse impact on jobs or employment opportunities. The proposed amendment extends for four years the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Environmental Performance Labels

I.D. No. ENV-14-09-00004-P

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

Proposed Action: Addition of Part 252; and amendment of Part 200 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 19-1101, 19-1103, and 19-1105

Subject: Environmental Performance Labels.

Purpose: To incorporate revisions California has made to its vehicle emission control program to include environmental performance labels.

Public hearing(s) will be held at: 1:00 p.m., May 11, 2009 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY; 1:00 p.m., May 12, 2009 at Department of Environmental Conservation Region 8 Office Conference Rm., 6274 E. Avon-Lima Rd., (Rtes. 5 and 20), Avon, NY; and 1:00 p.m., May 13, 2009 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY.

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

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

Text of proposed rule: (Sections 200.1 through 200.8 remain unchanged) Section 200.9, Table 1 is amended to read as follows:

252.3 California Code of Regulations, Title 13, Section 1965 [(12-4-03)] (6-16-08) **

* Any volume of the "Code of Federal Regulations" (CFR) can be obtained by writing the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Copies of CFR sections may also be obtained at the National Archives and Records Administration, <http://www.access.gpo.gov/nara/cfr/>

** Available from the Department of Environmental Conservation, Air Resources, 625 Broadway, Albany, NY 12233-3251.

*** Available from the California Code of Regulations website, <http://ccr.oal.ca.gov>

***† Available from the California Air Resources Board website, <http://www.arb.ca.gov/homepage.htm>

***** Available from ASTM, 100 Barr Harbor Drive, West Conshohocken, PA, USA 19428-2959, or the ASTM website, <http://www.astm.org/>

***** Available from New York State Department of Motor Vehicles, Technical Services Bureau, Swan Street Building, Empire State Plaza, Albany, NY 12228.

***** Available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

***** Available from Department of Health and Human Services, National Toxicology Program, Central Data Management, P.O. Box 12233, MxDxAO-01, Research Triangle Park, NC 27709.

***** Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

***** Available from Source Characterization Group A (MD-19), Emission Monitoring and Analysis Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

† Available from the California law website, <http://leginfo.ca.gov/calaw.html>

†† Available from California Air Resources Board website, <http://arb.ca.gov>

††† Available from the Document Automation and Production Service, Building 4/D, 700 Robbins Avenue, Philadelphia, PA 19111-5094 or at the DAPS website, <http://astimage.daps.dla.mil/quicksearch/>

†††† Available from the South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765-4182 or at the SCAQMD website: <http://www.aqmd.gov/>

Part 252, Environmental Performance Labels

Section 252.1 Prohibitions - New Motor Vehicles.

It is unlawful for any person to sell or offer for sale a new 2010, or subsequent model year, passenger vehicle, or light-duty truck in the State of New York to which an environmental performance label has not been affixed.

Section 252.2 Definitions.

The following definitions govern the provisions of this Part:

(a) 'Light-duty truck' means any motor vehicle rated at 8,500 pounds gross vehicle weight or less, or any other vehicle determined by the commissioner to be a vehicle whose primary use is noncommercial personal transportation.

(b) 'Model-year' means the manufacturer's annual production period for each engine family which includes January 1st of such calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

(c) 'Passenger vehicle' means a passenger car designed primarily for transportation of persons and having a design capacity of twelve persons or less.

(d) 'Sell' means to transfer title to a new motor vehicle to a purchaser of such new vehicle.

Section 252.3 Label Format.

Environmental performance labels shall be affixed to new motor vehicles and provide environmental performance information in a manner, format, and content that complies with California Code of Regulations, title 13, section 1965 (see Table 1, section 200.9 of this Title).

Text of proposed rule and any required statements and analyses may be obtained from: Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: 252labels@gw.dec.state.ny.us

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

Public comment will be received until: 5:00 p.m., May 20, 2009.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule must be approved by the Environmental Board.

Regulatory Impact Statement

1. Statutory Authority

The statutory authority for this amendment is the Environmental Conservation Law (ECL) Sections 19-1101, 19-1103, and 19-1105. Recently enacted sections 19-1101, 19-1103 and 19-1105 require the Department to adopt vehicle global warming index labels.

2. Legislative Objectives

Title 11 of Article 19 of the ECL requires the Department to adopt regulations necessary for the implementation of a vehicle global warming index label program.

The Commissioner has a specific mandate to adopt global warming index labels. The Department is proposing to incorporate California's latest environmental performance label standards. This regulation will further the goals of reducing air pollution from motor vehicles by providing consumers with clear information on the emissions of criteria pollutants and greenhouse gases for specific vehicles.

3. Needs and Benefits

Transportation accounts for 36 percent of all greenhouse gas (GHG) emissions in New York State with a total contribution of 86.2 million metric tons of carbon dioxide equivalent (MMT CO₂e) in 2005¹. This represents a 2.9 percent increase over 1990 emissions. GHG emissions from the transportation sector are projected to be 94 MMT CO₂e in 2010, and 104 MMT CO₂e in 2020².

GHG emissions contribute to global warming by trapping heat radiated from the earth's surface. As the atmosphere warms, it radiates heat back to the surface creating the "greenhouse effect". The greenhouse effect leads to increased global temperatures and eventually climate change. Global warming will have severe adverse impacts on human health, the environment, and the economy if GHG emissions are left unchecked.

Global warming may lead to the spread of vector-borne diseases and an increase in heat related illnesses or mortality. Severe fluctuations in precipitation frequency and intensity are likely to occur in addition to rising sea level. Climate change will pose serious challenges to ecosystems as they try to adapt, which could lead to a change in distribution, or

complete loss, of native species. Water supplies, coastal infrastructure, agriculture, and commerce are all likely to be adversely effected.

California amended its existing labeling requirements to include a global warming index, and added specific information and presentation requirements. There are requirements for the size, format, content, and placement of the label. Environmental performance labels are required to be four inches by six inches if used as a separate sticker, and 2.5 inches by 4.5 inches if incorporated into the Monroney sticker. The label must be affixed to new vehicles when they are delivered for sale. California's amendments became effective on June 16, 2008, and will be required for all passenger cars, light-duty trucks and medium-duty passenger vehicles up to 10,000 pounds beginning January 1, 2009.

California adopted the environmental performance label to better educate consumers about the relative emissions performance of new vehicles. The label will provide consumers with a relative indication of the emissions performance of a new vehicle for pollutants such as non-methane organic gas (NMOG), oxides of nitrogen (NO_x), evaporative hydrocarbons (HC), carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O) and hydro-fluorocarbons (HFC) compared to the emissions performance of the average new vehicle for the same model year. The scale is from one to 10 with one being the dirtiest and 10 being the cleanest.

New York State passed legislation in 2007 requiring that global warming index labels be affixed to new vehicles delivered for sale in New York. New York's regulation would take effect for 2010 and subsequent model year passenger vehicles and light-duty trucks up to 8,500 pounds gross vehicle weight rating (GVWR). Part 252 is being created to incorporate California's environmental performance label requirements.

4. Cost

Potential Costs to Local and State Agencies.

The proposed environmental performance labels are not expected to result in any additional costs for local and state agencies. Agencies will benefit by having access to the same emissions information as the general public when purchasing new vehicles. No additional paperwork or staffing requirements are expected.

Economic Impacts.

The environmental performance label regulation is expected to result in minimal costs to manufacturers. The California Air Resources Board (CARB) estimates that the total cost to the industry of implementing the new labels in California is \$245,000 annually³. This estimate includes an average initial annualized cost of \$3,500 per manufacturer for new color printers. The increase in label size is expected to result in an annual cost of \$667, and color cartridges are expected to be another \$4,000 annually. The total average annual cost per manufacturer is estimated to be \$8,167. Manufacturers also have the option of using pre-printed color label print stock instead of purchasing color printers. Under this option, manufacturers would utilize label print stock that has the required color portion pre-printed and will print the rest of the label in black ink. This would enable manufacturers to utilize existing, or new, black ink printers and comply with the label requirements at minimal cost.

The Department believes the cost of implementing the proposed labeling requirements in New York will be lower than CARB's estimate since manufacturers will have already purchased printers, or pre-printed label stock, to comply with California's regulation.

Potential Impact on Consumers.

The proposed environmental performance labels are not expected to result in any additional costs for consumers. Consumers will benefit by having access to information that will enable them to make knowledgeable decisions regarding vehicle emissions when purchasing new vehicles, ideally resulting in a cleaner fleet.

Potential Impact on Business Competitiveness.

The proposed regulations are not expected to impose a competitive disadvantage on dealerships. New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy noncompliant vehicles out of state since vehicles must be California certified in order to be registered in New York. This is currently the case with the existing LEV program and will not change with the proposed requirements. The proposed environmental performance label regulation applies equally to all manufacturers delivering new vehicles for sale in New York. Several of the surrounding states have adopted, or expect to adopt, similar labeling requirements.

5. Local Government Mandates

Local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles. In other words, they must purchase California certified vehicles.

6. Paperwork

The environmental performance label regulation should not result in any significant paperwork requirements for New York vehicle suppliers, dealers or government. New York relies on materials submitted to California for certification, while manufacturers must submit to New York annual sales and corporate fleet average reports to show compliance with the fleet average requirements. While dealers must ensure that the vehicles they sell are California certified and that labels are properly affixed, the Department believes that most manufacturers currently include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. This has been the case since New York first adopted the California LEV program in 1992. The implementation of the proposed labeling regulation is not expected to be burdensome in terms of paperwork to owners/operators of vehicles.

7. Duplication

There is no duplication.

8. Alternatives

The Department identified and reviewed alternatives for environmental performance labeling. These options included doing nothing, or adopting New York Specific labeling requirements as set forth by ECL section 19-1103.

The first option was not implementing a global warming index label regulation. The Department reviewed this option and made the determination to reject it. The primary basis for this decision was that the Department was statutorily obligated to establish a regulation for vehicle global warming index labels. The Department also determined that this option would deprive consumers of a valuable resource for making educated and knowledgeable decisions regarding emissions when purchasing new vehicles.

The second option was to develop a global warming index label as set forth in ECL section 19-1103. This legislation required the Department to develop a label for 2010 and subsequent model year vehicles sold in the state. The label was required to contain quantitative information of GHG emissions for new vehicles relative to the average new vehicle for the same model year. The Department was required to develop a label format, consult with various stakeholders, and update the index as needed. The labels were also required to be consistent with the index labels from other states.

9. Federal Standards

There are no equivalent federal requirements.

10. Compliance Schedule

This regulatory amendment will take effect for the 2010 model year for passenger vehicles and light-duty trucks up to 8,500 pounds GVWR.

¹ New York State Energy Research and Development Authority (NYSERDA). Patterns and Trends, New York State Energy Profiles: 1991-2005. January 2007. B-1.

² ICF Consulting. Estimating Transportation-Related Greenhouse Gas Emissions and Energy Use in New York State. March 18, 2005. Page 9.

³ California Air Resources Board (CARB). Initial Statement of Reasons for Rulemaking: Proposed Amendments to the Smog Index Vehicle Emissions Label (ISOR). May 2007. Page 24.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and adopt a new 6 NYCRR Part 252, Environmental Performance Label requirements. The changes to the regulations incorporate New York State's adoption of the environmental performance label standards adopted by the California Air Resources Board (CARB). These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, or purchasing passenger cars or trucks.

State and local governments are also consumers of vehicles that will be regulated under the proposed labeling amendments. Therefore, local governments who own, or operate, vehicles in New York State are subject to the same requirements as privately owned vehicles in New York State; i.e., they must purchase California certified vehicles.

The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any adverse impact to small businesses or local governments as a result.

There are no equivalent federal vehicle labeling standards available as a regulatory alternative.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses, or local governments. Reporting, recordkeeping, and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars are required to sell, or offer for sale, only California certified vehicles. Dealers must ensure that the labels are properly affixed to new vehicles delivered for sale. These proposed amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

CARB estimates that the proposed environmental performance label regulation will cost the manufacturers approximately \$245,000 annually. CARB estimates annual costs to the industry of \$20,000 for labels, \$105,000 for printers, and \$120,000 for printer cartridges. The average annual cost per manufacturer was estimated by CARB to be \$8,167, with variations for the number of assembly plants, ports of entry, printers required, and vehicles produced. CARB estimates approximately two million new vehicle sales in California, which results in a per vehicle cost well below \$1 per vehicle on average. Manufacturers also have the option of using pre-printed color label print stock instead of purchasing color printers. Under this option, manufacturers would utilize label print stock that has the required color portion pre-printed and will print the rest of the label in black ink. This would enable manufacturers to utilize existing, or new, black ink printers and comply with the label requirements at minimal cost.

The Department has reviewed CARB's estimate and agrees with the assumptions that were made. The Department expects that implementation of the environmental performance label would cost substantially less than \$1 per vehicle on average in New York State. This is based on 2007 model year sales in New York totaling approximately 743,000 new vehicles.

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the label program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

Currently, there is no automobile manufacturing in New York. However, there are affiliated businesses such as parts manufacturing and distribution, corporate offices, research and development, automobile dealerships, financial centers, and engineering and design facilities. These affiliated businesses are local businesses. They compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy non-complying vehicles out-of-state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

The label requirements are not expected to have a major cost impact on automobile dealers.

There will be no adverse impact on local governments who own, or operate, vehicles in the state because they are subject to the same requirements as those imposed upon privately owned vehicles. In other words, state and local governments will be required to purchase California certified vehicles.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

7. Economic and technological feasibility:

The proposed regulations are feasible for all vehicle manufacturers. The Department believes that adopting standards identical to California's

will simplify the compliance process for manufacturers by requiring one consistent format for all states. Further, manufacturers have the option of integrating the new labels into the existing Monroey stickers, which could simplify the process and reduce compliance costs.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and adopt a new 6 NYCRR Part 252, Environmental Performance Label requirements. The changes to the regulations incorporate New York State's adoption of the environmental performance label standards adopted by the California Air Resources Board (CARB). There are no requirements in the regulation which apply only to rural areas. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks.

The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

There are no equivalent federal vehicle labeling standards available as a regulatory alternative. The Department has a statutory obligation to develop a greenhouse gas (GHG) index label for 2010 and subsequent model year vehicles sold in New York.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, record keeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles and some engines are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

CARB estimates that the proposed environmental performance label regulation will cost the manufacturers approximately \$245,000 annually. CARB estimates annual costs to the industry of \$20,000 for labels, \$105,000 for printers, and \$120,000 for printer cartridges. The average annual cost per manufacturer was estimated by CARB to be \$8,167, with variations for the number of assembly plants, ports of entry, printers required, and vehicles produced. CARB estimates approximately two million new vehicle sales in California, which results in a per vehicle cost well below \$1 per vehicle on average. Manufacturers also have the option of using pre-printed color label print stock instead of purchasing color printers. Under this option, manufacturers would utilize label print stock that has the required color portion pre-printed and will print the rest of the label in black ink. This would enable manufacturers to utilize existing, or new, black ink printers and comply with the label requirements at minimal cost.

The Department has reviewed CARB's estimate and agrees with the assumptions that were made. The Department expects that implementation of the environmental performance label would cost substantially less than \$1 per vehicle on average in New York State. This is based on 2007 model year sales in New York totaling approximately 743,000 new vehicles.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas. As a result of the adoption of the label requirements, rural areas may benefit by seeing an improvement in the air quality.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and adopt a

new 6 NYCRR Part 252, Environmental Performance Label requirements. Part 252 is being adopted to incorporate environmental performance label standards that were adopted by the California Air Resources Board (CARB). The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State has had a new motor vehicle emission standards program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to jobs and employment opportunities as a result.

There are no equivalent federal vehicle environmental performance label standards available as a regulatory alternative. The Department has a statutory obligation to develop a GHG index label for 2010 and subsequent model year vehicles sold in New York. The label was to contain quantitative information of the GHG emissions for new vehicles relative to the average new vehicle for the same model year. The Department was tasked with developing the format and design in consultation with various stakeholders. The legislation required the label to be consistent with labels from other states. The Department believes that incorporating environmental performance label format requirements identical to California is the most efficient means of complying with the recent legislation. This would enable manufacturers to comply with the law while simplifying matters by utilizing one consistent format. Further, the New York legislation permits the Department to utilize California's label requirements.

2. Categories and numbers affected:

The changes to this regulation may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are likely to incur minimal costs in order to comply with the regulation. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out-of-state, but may be able to buy complying vehicles out-of-state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy non-complying vehicles out of state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The environmental performance label requirements are not expected to have an adverse impact on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified and that labels are properly affixed. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed label regulation is not expected to be burdensome in terms of additional reporting requirements for dealers.

5. Self-employment opportunities:

None that the Department is aware of at this time.

Statutory authority: Insurance Law, sections 201, 301, 1113(a)(4), (5), (6), (12), (20), 1306, 4102(c), 4117(e) and arts. 41, 61, 66, 67 and 70

Subject: Mandatory Catastrophe Reserves for Property/Casualty Insurance Companies.

Purpose: This rule requires insurers to set up a reserve fund to cover losses that occur in New York related to a natural catastrophe.

Text of proposed rule: Section 111.0 Statement of purpose.

This Part requires authorized property/casualty insurers to establish reserve funds for the payment of losses that occur in New York, arising out of natural catastrophes. Insureds currently pay for catastrophe coverage every year as part of their property insurance premiums, yet catastrophic events generally happen infrequently. This results in higher underwriting gains for insurers for years in which no catastrophe occurs. The portion of these underwriting gains generated from premiums being charged to insureds for catastrophe coverage should be retained by insurers in the event of future catastrophe losses, and not be distributed to shareholders or otherwise re-collected from policy holders through the premium on an annual basis. This reserve will have a stabilizing effect on insureds' premiums over time, and will facilitate the ability of insurers to fund catastrophic losses and mitigate the exposure of insurers' surplus to policyholders to large fluctuations resulting from such losses.

Section 111.1 Applicability and scope.

Every authorized property/casualty insurer issuing a policy of insurance or contract of reinsurance covering losses resulting from a natural catastrophe to property located in this State, and receiving New York subject premiums, shall establish a New York mandatory contingent catastrophe reserve, which shall only be used toward the payment of claims from qualifying losses. The New York mandatory catastrophe reserve shall apply to New York subject premiums of personal and commercial policies as defined in Section 111.2(b) of this Part.

Section 111.2 Definitions.

(a) *Catastrophe shall mean a natural event designated as a catastrophe by the Property Claims Service, a division of the Insurance Services Office, Inc., and:*

(1) *which causes \$250 million or more in industry-wide direct insured losses in the United States and results in a qualifying loss to property located in this State; or*

(2) *which causes \$25 million or more in direct insured losses results in a qualifying loss to property located in this State, and results in a 10% reduction in the insurer's surplus to policyholders in any calendar year.*

(b) *New York subject premiums shall mean premiums on policies or reinsurance contracts insuring property located in this State with respect to the kinds of insurance specified in Section 1113(a)(4), (5), (6), (12), or (20) or pursuant to Section 4102(c) of the Insurance Law, that are written on a direct or assumed reinsurance basis.*

(c) *New York mandatory contingent catastrophe reserve shall mean a liability account established to fund losses that result from a catastrophe that has not yet occurred.*

(d) *Property/casualty insurer shall mean an insurer licensed pursuant to Article 41, 61, 66, 67 or 70 of the Insurance Law.*

(e) *Qualifying losses shall mean losses and loss adjustment expenses incurred, net of reinsurance, resulting from loss to property located in this State and which are directly attributable to a catastrophe in this State.*

(f) *Aggregate catastrophe load shall mean the total dollar amount of all catastrophe loads, net of non-hurricane catastrophe provisions and excess of loss reinsurance ceded, charged to all rating territories.*

(g) *Event-specific catastrophe loss reserve shall mean a loss reserve established to fund losses resulting from a particular catastrophe that has actually occurred.*

(h) *Natural event shall mean an occurrence that is not man-made, including but not limited to wind, hail, hurricane, earthquake, winter storms (including snow, ice, freezing rain), tsunami, or flood.*

Section 111.3 Annual contribution to the New York mandatory catastrophe reserve.

(a) *Every property/casualty insurer shall annually fund its mandatory catastrophe reserve in an amount equal to the aggregate catastrophe load, included in the New York subject premiums, for the calendar year.*

(b) *Notwithstanding subdivision (a) of this section, an insurer need not fund its mandatory catastrophe reserve with respect to assumed reinsurance premiums on excess of loss reinsurance contracts.*

(c) *The funding described in subdivision (a) of this section shall be net of any federal, state and local income tax incurred on the reserve.*

(d) *Any investment income earned from the funds held in the mandatory catastrophe reserve shall be included in the reserve to the extent provided in section 111.4 of this Part.*

Section 111.4 Accumulation of the New York mandatory catastrophe reserve.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mandatory Catastrophe Reserves For Property/Casualty Insurance Companies

I.D. No. INS-14-09-00020-P

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

Proposed Action: Addition of Part 111 (Regulation 189) to Title 11 NYCRR.

The New York mandatory catastrophe reserve shall have a 30-year rolling term. At the end of the 30th year, the first year's annual contribution including investment income, to the extent not used to fund qualifying losses, shall be taken into income, and the 30th year's annual contribution, including investment income, shall be added to the reserve. At the end of the 31st year, the second year's contribution shall be taken into income to the same extent and in the same manner as the first year's, and the 31st year's annual contribution, including investment income, shall be added to the reserve. This pattern of practice shall continue each year thereafter.

Section 111.5 Conversion of the New York mandatory catastrophe reserve.

(a) When a property/casualty insurer incurs a qualifying loss on property located in this State, it may convert its New York mandatory catastrophe reserve, or a portion thereof, to an event specific catastrophe loss reserve.

(b) Within 30 days of converting funds from the New York mandatory catastrophe reserve arising out of a catastrophe defined in Section 111.2(a)(1) of this Part, a property/casualty insurer shall provide the superintendent with written notice of the conversion. The notice shall be in a form specified by the superintendent showing the amount of the conversion, calculation of the source of all funds being converted, and the catastrophe that necessitated the conversion. With respect to a catastrophe defined in section 111.2(a)(2) of this Part, the amount converted shall be the lesser of: (1) the reduction in the insurer's surplus to policyholders in that calendar year; or (2) the total amount held in the mandatory catastrophe reserve.

(c) A property/casualty insurer shall promptly return to the New York mandatory catastrophe reserve any event-specific catastrophe loss reserve converted from the New York mandatory catastrophe reserve that is not ultimately expended to pay for qualifying losses.

(d) Notwithstanding subdivision (a) of this section, the superintendent may approve funds for release from the New York mandatory catastrophe reserve:

(1) to mitigate potential impairment of the property/casualty insurer;
(2) when the property/casualty insurer no longer has exposure to losses resulting from a catastrophe;

(3) where the release of funds is authorized pursuant to section 111.7 of the Part; or

(4) where the release of the funds would be in the best interests of the policyholders of this State.

Section 111.6 Financial Statement reporting requirements.

(a) For a domestic property/casualty insurer, or the United States branch of an alien insurer entered through New York, the New York mandatory catastrophe reserve shall be shown as a write-in liability item on the property and casualty quarterly and annual statements regularly submitted to the Insurance Department.

(b) For a foreign property/casualty insurer, or the United States branch of an alien insurer entered through a state other than New York, the New York mandatory catastrophe reserve shall be shown as a write-in liability item on the New York supplement to the property and casualty annual statement regularly submitted to the Insurance Department.

Section 111.7 Agreements with other states.

The superintendent may enter into a reciprocal agreement with another state that has established substantially similar catastrophe reserve requirements. If the superintendent enters into a reciprocal agreement with another state that has established catastrophe reserve requirements, whereby the reserves held by the insurer in the other state will be available for release when such insurer incurs a loss resulting from a catastrophe on property located or resident in any state that is a party to the agreement, the New York mandatory catastrophe reserve shall be available for release as if the loss occurred in this State. However, the release of funds from the New York mandatory catastrophe reserve to pay for such losses occurring outside of New York may not be considered in the development of rates in New York.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, NYS 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: Buffy Cheung, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5587, email: bcheung@ins.state.ny.us

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

Summary of Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 1113(a)(4), (5), (6), (12), and (20), 1306, 4102(c), 4117(e), and Articles 41, 61, 66, 67, and 70 of the In-

urance Law. These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for property/casualty insurers.

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

Section 1113 establishes the kinds of insurance that may be authorized to be written by insurers in this state. Except as otherwise specifically provided in the Insurance Law, an insurer may not write any kind of insurance not specified in section 1113.

Section 1306 requires that, in addition to liabilities and reserves on contracts of insurance issued by it, every insurer shall be charged with the estimated amount of all its other liabilities, including any special reserves required by the superintendent pursuant to the provisions of this chapter.

Article 41 sets forth the kinds of insurance that stock and mutual property/casualty insurance companies ("p/c insurers") may be organized and licensed to write, as well as the financial requirements for stock p/c insurers and mutual p/c insurers based upon the specific kinds of insurance for which they are requesting licensure.

Section 4102(c) establishes that a property/casualty insurance company organized and licensed to write any basic kind of insurance, may be licensed, except with respect to life insurance, annuities and title insurance, to reinsure risks of every kind or description, including those specified in Section 1113(a) (4), (5), (6), (12), or (20).

Section 4117(e) provides that, whenever in the judgment of the superintendent, the loss and loss expense reserves of any property/casualty insurance company doing business in this state are inadequate or excessive, he may prescribe any other basis which will produce adequate and reasonable reserves.

Article 61 provides the definition, organization, and financial requirements of reciprocal insurers licensed in New York.

Article 66 regulates the formation and operation of Assessment Co-Operative Property/Casualty Insurance Companies and Advance Premium Co-Operative Property/Casualty Insurance Companies.

Article 67 provide for the organization and licensing of a nonprofit property/casualty insurer (or nonprofit reciprocal insurer) to insure nonprofit organizations.

Article 70 provides for the formation, operation and regulation of New York domiciled captive insurance companies.

2. Legislative objectives: Section 4117(e) of the Insurance Law grants the superintendent discretion to modify the formula for calculating loss and loss expenses reserves or prescribe any other basis which will produce adequate and reasonable reserves whenever in his judgment loss and loss expense reserves, calculated in accordance with the section, are inadequate or excessive.

It is apparent that in enacting sections 4117(b), (c), (d) and (e), the legislature recognized the multitude of factors considered in calculating reserves. The legislature has granted the superintendent the authority to determine the adequacy of the reserves set by insurers. Section 4117(e) authorizes the superintendent to review the adequacy of reserves and, if necessary, to exercise discretion and modify the reserve formulas or prescribe any other basis which will produce adequate reserves. Sections 4117(b), (c) and (d) acknowledge the superintendent's power.

3. Needs and benefits: Generally, insurance companies establish loss reserves only to cover claims for incidents that have occurred but that have not been paid, up to the current financial statement reporting date. These reserves cover incidents that have occurred in the current or prior reporting periods.

Insurers do not establish loss reserves to cover events (e.g., catastrophes), that have not occurred, yet every year property insurance premiums include a charge to their policyholders for possible catastrophe losses. For catastrophes, such as hurricanes, there are a very small number of very large events resulting in claims by a large number of policyholders all at once. It can generally be predicted how often hurricanes will occur but not exactly when. Effectively spreading the risk of hurricane losses requires not only sharing among many people, but also across several years.

In determining the rates charged by insurers, insurers are permitted to include a catastrophe load in the premiums charged to insureds. This catastrophe load is meant to cover catastrophes that may occur and affect the solvency of the insurer. Catastrophic events generally happen infrequently, especially in a northeastern state such as New York, and insurers have been charging insureds for this coverage for years without establishing a corresponding reserve. In order to ensure the continuing solvency of insurers in the event of a catastrophe, this rule requires insurers to set up a reserve funded by the catastrophe load.

The new reserve required by this rule would cover losses that occur in New York, related to natural catastrophes such as hurricanes, wind, hail, earthquake, winter storms (including snow, ice, freezing) or tsunami. This rule requires companies to reserve the amount they now charge policyholders for catastrophe protection (including any investment income earned on

such amounts), net of any reinsurance purchased to mitigate the impact of catastrophe(s), and net of any federal, state and local income tax incurred on such reserves. Without such a reserve, the catastrophe load is reported as pure profit by the insurer if the catastrophe does not occur in the policy year and goes to the capital of the insurer. A catastrophe reserve will allow the setting aside of these premiums and can be used to fund the huge catastrophe losses when they occur. The reserve will have a stabilizing effect on the amount of premiums paid by insureds.

The rule also increases transparency, which would benefit the insurance industry's standing by enabling consumers to track more directly what happens to the catastrophe portion of the premium that they pay. If the catastrophe reserves established by insurers prove insufficient in amount, consumers will better understand the need for increased costs following a catastrophe. But if such were large and untouched, consumers will have a clearer basis for questioning continued rate increases based on concern about future catastrophe losses.

In summary, the premium side of the insurance accounting equation recognizes that there is the potential for catastrophes to occur in any given policy year. This rule requires the reserve liabilities also to recognize that fact. This approach will allow the insurer to accumulate more adequate reserves to pay claims, when a catastrophe occurs.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department.

Insureds pay for catastrophe coverage every year as part of their property insurance premiums, yet catastrophic events generally happen infrequently. This results in significant underwriting gains for insurers for years in which no catastrophe occurs. This rule requires authorized property/casualty insurers to establish reserve funds for the payment of losses that occur in New York, arising out of natural catastrophes. This rule requires that the underwriting gains and investment income earned on such reserve funds be retained in the reserve by insurers as a means of further accumulating funds to help pay the huge catastrophe losses when they occur. This will represent an "opportunity cost" to the insurer because the catastrophe premiums must be retained for payment of future losses, rather than being made available for other purposes. The Department would not, however, consider the loss of this opportunity cost to be a justifiable reason for a rate increase under Article 23 of the Insurance Law.

Section 111.7 of the rule permits the Superintendent to enter into a reciprocal agreement with another state that has established substantially similar catastrophe reserve requirements. However, the release of funds from the New York mandatory catastrophe reserve to pay for such losses occurring outside of New York may not be considered in the development of rates in New York.

For the first year, the amount to be set aside by each insurer was determined by taking five percent of each company's 2007 written premium volume for homeowners' insurance. Based upon the calculation method set out above, the Department estimates that the catastrophe reserve fund will accumulate approximately \$196 million in the first year. It should be noted that this calculation method only takes into account written premium volume for homeowners' insurance, whereas the proposed regulation is not limited to homeowners' insurance. This is an inexact method at best for three reasons: First, the written premium data we have includes all homeowners policies, including owners forms as well as renter, condo and co-op forms, the latter three of which have significantly lower catastrophe loads associated with them; second, individual insurer's catastrophe loads vary significantly by territory or region, with the upstate territories generally being assigned a much lower catastrophe load than downstate, and Long Island being assigned a higher catastrophe load than the five boroughs; and third, catastrophe loads vary, sometimes significantly, from one insurer to another based upon the particularities of each insurer's book of business. In all three instances described above, the Department does not capture or have ready access to information that would enable us to further refine these estimates.

In the event of a catastrophe, as defined under this part, insurers may convert the reserve funds for use in payment of catastrophe claims. In that instance, the insurer shall provide the superintendent with written notice of such conversion within 30 days of converting the funds. The cost of complying with the new requirement to notify the Department should be minimal.

5. Local government mandates: None.

6. Paperwork: Paperwork associated with the submission of a filing by an insurer should be minimal. If, in the event of a catastrophe, an insurer converts the reserve funds for use in payment of catastrophe claims, it shall provide the superintendent with written notice of such conversion within 30 days.

7. Duplication: None.

8. Alternatives: In developing this rule, the Department reviewed the research of the National Association of Insurance Commissioners - Catastrophe Insurance Working Group, Casualty Actuarial Society, and

performed outreach to property/casualty insurers, consumer groups, and other interested parties.

The NAIC proposal, which creates a voluntary catastrophe reserve fund, provides for a reserve "cap" based upon a percentage of the premium written by each insurer. When the reserve cap is reached the reserve must be drawn down by the insurer. The NAIC proposal is based upon the assumption that Federal tax law will be amended to allow insurers to take a tax deduction for these reserves. There is no indication that Congress intends to make such a change to the Federal tax law and the NAIC proposal will need to be re-worked to take that into account.

Under the Department's proposal, every property/casualty insurer shall annually fund its mandatory catastrophe reserve in an amount equal to the aggregate catastrophe load, included in the New York subject premiums, for the calendar year. The New York mandatory catastrophe reserve shall have a 30-year rolling term. At the end of the 30th year, the first year's annual contribution including investment income, to the extent not used to fund qualifying losses, shall be considered income, and the 30th year's annual contribution, including investment income, shall be added to the reserve. The Department also considered the appropriate length of time for the rolling term of the reserve. The Department determined that a period of less than 30 years would not allow the reserve to accumulate sufficient funds and that a period of more than 30 years would be more restrictive than necessary.

The Department considered creating a single "state run reserve fund". All insurers would make contributions and the funds would be available to pay claims submitted by any member company. The Department would likely need legislative authorization to take such action. In addition, the Department decided against this method because it would not encourage sound underwriting practices, since companies could rely upon the availability of fund assets to pay claims.

The Department received comments from two leading property-casualty insurance trade organizations, two large property and casualty insurance groups, and a non-profit trade association of U.S. property and casualty reinsurers and reinsurance brokers. A complete discussion of the comments submitted can be found at the Department's website (<http://www.ins.state.ny.us>).

9. Federal standards: None.

10. Compliance schedule: This rule applies to financial statements filed on or after July 1, 2009. Insurers are already collecting a portion of their premiums for catastrophe coverage every year. The rule requires insurers to retain this portion of the premiums, establish a catastrophe reserve, convert the reserve to pay claims in the event of a catastrophe, and provide the superintendent with written notice of such release within 30 days. Insurers should have ample time to achieve full compliance.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. This rule applies to stock property/casualty insurance companies authorized to do business in New York State and self-insurers, none of which falls within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none that are both independently owned and that employ fewer than 100 persons. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and determined that none of them falls within the definition of "small business".

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers affected by this rule do business in every county in this state, including "rural areas" as defined under Section 102 (1) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements: In the event of a catastrophe, if an insurer releases the reserve funds for use in payment of claims, it shall provide the superintendent with written notice of such release within 30 days. The cost of complying with the new requirement to notify the Department should be minimal.

3. Costs: This rule imposes no compliance costs upon state or local governments.

Insureds pay for catastrophe coverage every year as part of their property insurance premiums, yet catastrophic events generally happen infrequently. This results in significant underwriting gains for insurers for years in which no catastrophe occurs. This rule requires authorized property/casualty insurers to establish reserve funds for the payment of losses that occur in New York, arising out of natural catastrophes. This rule requires that the underwriting gains and investment income earned thereon be retained by insurers in the event of future catastrophe losses. This will represent an "opportunity" cost to the insurer because the catastrophe premiums must be retained for payment of future losses, rather than being available for other purposes.

The reserve funds required by this rule will facilitate the ability of insurers to fund catastrophic losses and mitigate the exposure of insurers' surplus to policyholders to large fluctuations resulting from such losses. In the event of a catastrophe, as defined under this part, insurers may release the reserve funds for use in payment of claims. In that instance, the insurer shall provide the superintendent with written notice of such release within 30 days of releasing the funds. Section 111.5(d) of the regulation establishes additional circumstances where insurers may release the reserve funds for use in payment of claims, if granted approval to do so by the Superintendent. The cost of complying with the new requirement to notify the Department should be minimal.

4. Minimizing adverse impact: The regulation applies to regulated parties that do business throughout New York State and does not impose any adverse impact on rural areas.

This rule requires insurers to establish and maintain catastrophe reserves, and will facilitate the ability of insurers to fund catastrophic losses, when such losses occur. The catastrophe reserve will benefit policyholders, by creating an additional source for payment of catastrophe losses, and will mitigate the exposure of insurers' surplus to policyholders to large fluctuations resulting from such losses.

The rule also increases transparency, which would benefit the insurance industry's standing by enabling consumers to track more directly what happens to the catastrophe portion of the premium that they pay. If the catastrophe reserves established by insurers prove insufficient in amount, consumers will better understand the need for increased costs following a catastrophe. But if such were large and untouched, consumers will have a clearer basis for questioning continued rate increases based on concern about future catastrophe losses.

Under current accounting and federal tax rules, insurance companies may not set up a reserve to fund losses from events that have not yet occurred, such as those from future catastrophes. Companies can deduct from this year's revenues money reserved for claims resulting from events that occur this year, which would reduce its current year's tax liability. Statutory accounting considers those reserves an operating expense. But if a company does not know when the event will occur, then money placed in reserve is not considered an expense in the current year by statutory accounting, and is subject to federal and state taxes because it is treated as income to the company.

In order to address the fact that this reserve is subject to taxation absent amendments to the federal tax law, the Department revised its proposal to require that the reserve be established net of any federal and state taxes incurred, thus fairly recognizing the taxability of these reserves and not penalizing the insurer for that expense.

A comment received by the Department expressed concern that the catastrophe reserve may not be sensitive to the needs of small companies, because the impact of the reserve definitions may require some small insurers to purchase additional reinsurance to protect them against a "catastrophe" that does not meet the definition set forth in the regulation. Thus, such companies' reinsurance costs could, it is asserted, increase unnecessarily. But the rule does not require insurers to purchase additional insurance, and New York insureds already pay for catastrophe coverage every year as part of their property insurance premiums, regardless of the size of the entity insuring the risk.

A comment received by the Department noted that if insurers are required to hold more capital due to the fact that a portion of the surplus is dedicated to 50 different catastrophe reserves, insurers will need to increase their property insurance rates to earn the target rate of return underlying their current rate structure. The commenter added that if carriers are unable to obtain the necessary rate increases for either marketplace reasons or regulatory limitations, many carriers likely will reduce their catastrophe exposures so as to limit the need for additional capital. However, New York insureds already pay for catastrophe coverage every year as part of their property insurance premiums. The catastrophe reserve required by this rule merely builds upon the catastrophe load already charged by insurers to policyholders, and therefore should not increase an insured's rates. In the rate making process, the catastrophe load is not considered profit; it is a specific charge associated with the payment of a specific type of expected loss.

5. Rural area participation: In developing this rule, the Department reviewed the research of the National Association of Insurance Commissioners - Catastrophe Insurance Working Group, Casualty Actuarial Society, and conducted outreach to property/casualty insurers, consumer groups, and other interested parties, including those located or domiciled in rural areas.

Job Impact Statement

The Insurance Department finds that this rule should have no impact on jobs and employment opportunities since it only modifies some of the requirements placed on insurers with respect to establishment and maintenance of catastrophe reserves. Compliance should not require the employment of additional personnel or outside contractors.

Department of Labor

EMERGENCY RULE MAKING

Provision of Safety Ropes and System Components for Firefighters at Risk of Being Trapped at Elevations

I.D. No. LAB-14-09-00003-E

Filing No. 270

Filing Date: 2009-03-20

Effective Date: 2009-03-20

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

Action taken: Addition of section 800.7 to Title 12 NYCRR.

Statutory authority: Labor Law, art. 2, sections 27 and 27-a, title 7, section 200

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

Specific reasons underlying the finding of necessity: To give Fire Departments sufficient time to conduct risk assessments regarding the type of safety ropes and rescue systems needed, to purchase needed equipment, and to train firefighters in their use before effective date of the statutory requirement.

Subject: Provision of safety ropes and system components for firefighters at risk of being trapped at elevations.

Purpose: To insure that firefighters are provided with appropriate ropes and system components for self-rescue and emergency escape.

Text of emergency rule: 12 NYCRR Section 800.7 *Emergency Escape and Self Rescue Ropes and System Components for Firefighters*.

(a) *Title and Citation:* Within and for the purposes of the Department of Labor, this part may be known as Code Rule 800.7, *Emergency Escape and Self Rescue Ropes and System Components for Firefighters, specifying the requirements for safety ropes and associated system components*.

(b) *Purpose and Intent:* This rule is intended to ensure that firefighters are provided with necessary escape rope and system components for self rescue and emergency escape and to establish specifications for such ropes and system components.

(c) *Application:* This part shall apply throughout the State of New York to the State, any political subdivision of the State, Public Authorities, Public Benefit Corporations or any other governmental agency or instrumentality thereof employing firefighters within the meaning of § 27-a of the Labor Law.

This Part shall not apply to such employers located in a city with a population of over one million.

(d) **DEFINITIONS.** Within this part, the following terms shall have the meanings indicated:

(1) "System Components" means safety harnesses, belts, ascending devices, carabiners, descent control devices, rope grab devices, and snap links.

(2) "Escape Rope" means a single purpose, single use, emergency escape (Self-rescue) rope.

(3) "Interior Structural Fire Fighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

(4) "Interior Structural Fire Fighter" means a firefighter who is designated by their employer to perform interior structural firefighting duties in an immediately dangerous to life and health (IDLH) atmosphere and is medically qualified to use self-contained breathing apparatus (SCBA) as defined in 29 CFR 1910.134.

(5) "Entrapment at Elevations" means a situation where a firefighter finds the normal route of exit is made unusable by fire, or other emergency situation, that requires the firefighter to immediately exit the structure from an opening not designed as an exit, that is above the ground floor and at an elevation above the surrounding terrain which would reasonably be expected to cause injury should the firefighter be required to exit.

(e) *Specifications for Escape Ropes and System Components.*

Escape ropes and system components provided to firefighters shall conform to the requirements of "The National Fire Protection Association Standard 1983, Standard on Fire Service Life Safety Rope and Equipment for Emergency Services" in effect at the time of their manufacture. Escape ropes and system components purchased after the effective date of

this Part shall conform to the 2006 edition (NFPA1983- 2006) of such standard.

(f) Risk Assessment and Equipment Selection.

(1) Each employer who employs firefighters shall develop a written risk assessment to be used to determine under what circumstances escape ropes and system components will be required and what type will be required to protect the safety of firefighters in its employ. In performing the assessment, the employer shall:

(i) Identify the types and heights of buildings and other structures in the area the firefighters are expected to work. Such area shall include the regular scope of the fire district or other area covered by the fire department in question as well as any other districts or communities to which the fire department provides mutual aid with a reasonably predictable frequency.

(ii) Assess the standard operating procedures followed by the department with regard to rescue of firefighters from elevations.

(iii) Identify the risks to firefighters of being trapped at an elevation during structural fire fighting operations given the types of buildings or other structures located in the area(s) in which firefighters are expected to work. Identification of the risk in question shall include an assessment of:

(a) the extent to which standard operating procedures already in place will mitigate the risks identified;

(b) the type of escape ropes and system components that will be necessary to protect the safety of firefighters if operating procedures do not sufficiently mitigate the risk.

(2) Should the risk assessment establish that firefighters employed by the department performing interior structural firefighting are reasonably expected to be exposed to the risk of entrapment at elevations, the employer shall provide to each interior structural firefighter in its employ a properly fitted escape rope and those system components which meet the specifications for such rope and system components set forth in Section 800.7(e) and which would mitigate the danger to life and health associated with such risk.

(g) Training.

(1) The employer shall ensure that each firefighter who is provided with an escape rope and system components is instructed in their proper use by a competent instructor. Instruction shall include the requirements of paragraph (h) of this Part and the user information provided by the manufacturer as required by NFPA 1983 Chapter 5.2 for each rope and system component.

(2) Instruction shall include hands-on use of the equipment in a controlled environment.

(3) A record of such instruction including the name of the individual being trained, the name of the individual delivering the training, and the date on which the training was provided shall be maintained by the employer until such time as the firefighter is no longer employed by the employer or the employer delivers a subsequent training on this topic, whichever comes first.

(h) Employer Duties. In addition to the duties set forth in Parts 800.7(f) and (g), employers covered by this Part shall have the following duties:

(1) To ensure the adequacy of the safety ropes and system components, the employer shall routinely inspect and ensure that:

(i) Existing safety ropes and system components meet the codes, standards, and recommended practices adopted by the Commissioner;

(ii) Existing safety ropes and system components still perform their function by taking precautions to identify any of their limitations through reasonable means, including, but not limited to:

(a) Checking the labels or stamps on the equipment; and

(b) Checking any documentation or equipment specifications;

and

(c) contacting the supplier or approval agency.

(iii) Firefighters are informed of the limitations of any safety rope or system components;

(iv) Firefighters are not allowed or required to use any safety rope or system components beyond their limitations;

(v) Existing or new safety ropes and system components have no visible defects that limit their safe use;

(vi) Safety ropes and system components are used, cleaned and maintained according to the manufacturer's instructions;

(vii) Firefighters are instructed in identifying to the employer any defects the firefighter may find in safety ropes and system components; and

(viii) Any identified defects are corrected or immediate action is taken to eliminate the use of the equipment by:

(a) Ensuring that escape rope and system components with defects which are repairable are tagged as unsafe and stored in such a manner that they cannot be used until repairs are made;

(b) Ensuring that escape rope and system components that cannot be repaired are immediately destroyed or rendered unusable as an escape rope and system components; and

(c) Ensuring that any escape rope that has been utilized under load for the purpose of self rescue / emergency escape is immediately removed from service, destroyed, or rendered unusable as an escape rope and immediately replaced.

(2) The employer's routine inspection cycle required by this paragraph shall be based upon the volume of activity the Department undertakes but, in no case, any less frequently than once each month.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 17, 2009.

Text of rule and any required statements and analyses may be obtained from: Thomas Mc Govern, NYS Department of Labor, Counsel's Office, State Office Campus; Bldg. 12, Rm 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcgovern@labor.state.ny.us

Regulatory Impact Statement

Statutory Authority: The legislature placed the amendment in Article 2 Section 27a of the Labor Law, Public Employee Safety and Health Act. Section 4 of the Act directs the Commissioner to promulgate rules to provide for the enforcement of the amendment and require that the latest edition of the National Fire Protection Association's standard on Life Safety Ropes and System Components be adopted.

The Commissioner has broad authority to promulgate rules and regulations under New York State Labor Law Article 2, Section 27a; Article 2, Section 27; Article 7, Section 200.

Legislative Objective: The intent of the Legislature was to insure that firefighters are provided with the appropriate ropes and system components to allow self-rescue from upper stories of buildings should they become trapped. The Legislature also specified the national consensus standard to which life safety ropes and system components must conform as well as the testing criteria that must be followed by the manufacturer.

Needs and Benefits: Firefighters occasionally become trapped on upper stories during fire suppression activities. Many times the firefighter is rescued by ladders or aerial apparatus; however, there are cases where the trapped fire fighter cannot be reached or the rapid development of the emergency situation does not allow for rescue by other means and those cases could result in death or serious injury. One such case involved 6 trapped firefighters who were forced to jump from a fourth story. Four were seriously injured and two died of their injuries. Some of these injuries and deaths were attributable, in part, to either the lack of rescue ropes or the failure of the rope involved.

Costs: The ropes and system components needed to equip a firefighter for self rescue can be obtained for as little as \$60.00. New York City has provided each of its firefighters with a system that costs more than \$400.00. The proposed rule contains no minimum cost threshold. This allows the employer to take appropriate steps to reduce the cost of providing the equipment required by the rule, so long as the employer provides equipment appropriate for the risks identified in its risk assessment. Moreover, the equipment need only be provided to interior structural firefighters who work in areas where they could become trapped. Employers need not purchase or provide ropes and rescue devices to apparatus drivers and fire policemen or other employees not expected to perform interior structural firefighting.

Additional costs would be incurred for training in instructing employees in the use of the selected equipment and self rescue techniques. These costs will vary but as an example of the potential costs associated with the rule, one manufacturer sells a system which costs \$400.00 while the training in the system use is \$250.00 per person. On the other hand, the manufacturer will offer train the trainer instruction to a Fire Department Trainer for a one time cost; this instruction will then permit the Department to train its affected employees at a much lower cost than it would incur if it purchased the manufacturer's training for each of its members. Also, as mentioned elsewhere in this rulemaking, fire departments may also consider other methods to reduce training costs such as using in-house trainers and consolidating training classes with fellow departments to maximize training resources.

Paperwork: The paperwork requirements contained in the proposed rule are minimal. The employer must certify that the hazard assessment has been completed and must maintain that document. The employer must also keep training record identifying all employees trained under the rule. Since other standards and laws already require that training records be maintained, this provision will have minimal impact on the employer.

Local Government Mandates: Fire protection is a function of local government and as such the monetary burden of providing this equipment will be borne by the local government responsible for fire protection. The legislature did not provide funding for mandate relief.

Duplication: This rule does not duplicate any state or federal regulations. Alternatives: The legislation requiring promulgation of the rule provided little room for any alternative to be considered. The amendment specifically requires equipment that meets a defined national consensus standard for specific purposes. The alternatives provided by the Depart-

ment involve the judgment of the Department with regard to the risks faced by its employees performing interior structural firefighting and the ropes and equipment needed to mitigate that risk. The agency determined that the employer would be best suited to survey the hazards in the local protection area and select the equipment based upon the hazards firefighters would be exposed to, as opposed to imposing its own stringent requirements specifying the type of equipment needed.

Federal Standards: There are no federal standards with like requirements.

Compliance Schedule: The provisions of the amendment are effective on May 18, 2008 and employers will be required to be in compliance by November 1, 2008. The effective date of the rule will be upon adoption. The compliance aspects are not difficult and under normal inspection protocols an employer would be given 30 days to comply.

Regulatory Flexibility Analysis

Effect of the Rule: There is no requirement for small businesses; the rule will apply to all governmental agencies that employ a firefighter. The rule does not apply to New York City. Virtually all local government will be affected by this rule. Impacts should be low with compliance costs at less than \$100.00 per firefighter in most areas of the state. In many smaller municipalities, minimal costs would accrue depending on the nature of the structures in the area protected.

Local Governments with hazards requiring the provision of protective equipment and training for firefighters may collaborate on the training and use quantity buying practices to reduce costs. Training requirements could also be met by utilizing free training provided by the Department of State, Office of Fire Prevention and Control. However, that agency does not have the resources to train every firefighter affected by this rule.

Compliance Requirements: The Law requires that each employer that employs firefighters must provide emergency escape rope and system components appropriate for the risk to which firefighters in their employ are exposed. To accomplish this the employer must conduct an assessment of the types of structures in the fire protection area, determine what the hazard to employees would be and then provide the appropriate harnesses, ropes and equipment so that employees may self rescue should they become trapped at an elevation expected to cause injury should the individual be required to jump. The law also requires that the employer is required to provide training in the use of the provided equipment and inspect and assure the safety of the equipment. The authorizing legislation was also specific as to the design and testing of the provided equipment citing a national consensus standard, The National Fire Protection Association Standard 1983, "Life Safety Rope and Equipment for Emergency Responders". The law requires the commissioner to adopt the latest edition which is the 2006 edition.

NFPA 1983-2006 established the design, construction and testing requirements for emergency escape and life safety ropes and system components and all such equipment must bear a label attesting to its conformance.

To meet the compliance requirements the employer must:

1. Conduct a hazard assessment to establish the risk.
2. Select the appropriate ropes and system components.
3. Provide properly fitted ropes and system components (many belts and harnesses are sized) to each Firefighter at risk.
4. Train each firefighter in the use of the selected rope and system components.
5. Inspect the ropes and system components periodically to assure they are safe for use.

Professional Services: Training on the required subject matter is provided free of charge by the Office of Fire Prevention and Control. OFPC classes are limited and would not meet the needs of all employers. There are also many experts in the field who provide rope training and smaller employers could collaborate and share the expense of training.

Under provisions of the executive law, career departments must have a Municipal Training Officer who would be capable of providing the training.

Compliance Costs: Purchase of the ropes and system components would be relatively inexpensive in suburban fire protection areas. As the height and complexity of structures increase the equipment will become more expensive and the required training more comprehensive.

Many suppliers can provide ropes and attachment devices at a price range from \$ 20.00 to \$50.00. Harnesses or escape belts can run from \$50.00 to \$100.00. On the high end of the cost spectrum, the system developed and used by FDNY costs approximately \$400.00 per firefighter and the Manufacturer (Petzil) requires that the employer participate in their training program at \$250.00 per person. They will provide train the trainer services.

Economic and Technological Feasibility: The emergency regulation does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

Minimizing Adverse Impact: The emergency regulation is necessary to

implement Labor Law, Section 27-a(4)(c), as enacted by chapter 433 of the Laws of 2007 and amended by chapter 47 of the Laws of 2008, and to that extent, does not exceed any minimum State standards. Section 27-a(4)(c) requires the Commissioner to adopt the codes, standards and recommended practices promulgated by the most recent edition of the National Fire Protection Association 1983, Standard on Fire Service Life Safety Ropes and System Components, and as are appropriate to the nature of the risk to which the firefighter shall be exposed. This emergency regulation has been carefully drafted to meet these State statutory requirements and does not impose any additional costs or compliance requirements on local governments that employ firefighters beyond those inherent in the statute.

Small Business and Local Government Participation: This emergency regulation has no impact on small business. The regulation applies to all governmental agencies that employ a firefighter. The Department solicited input on this regulation by holding meetings with employer groups such as the New York State Association of Fire Chiefs and Regional Fire Administrators from around the State. The regulation was also discussed with the Counsel for the Firemen's Association of the State of New York. Additionally, input was solicited from the Office of Fire Prevention and Control and from the Department of State Counsel. Local governments that employ firefighters will also have an opportunity to comment on this regulation when it is subsequently filed as a proposed regulation and may offer comments at the public hearing that will be held regarding the proposed regulation.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to all public employers who employ firefighters. As many as 800 employers in rural or suburban areas will be affected by this rule.

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

The rule will require the employer to maintain training records to show that the firefighters have been trained. Employers are already required to maintain training records by other rules such as the OSHA requirements promulgated under 12NYCRR Part 800. The proposed rule does not appear to impose an additional recordkeeping burden on the employer and will require a minimum amount of effort to comply. The training record must be maintained until the training is repeated, for a period of one year.

Compliance with the overall rule will be less and less burdensome as the size of the employer decreases. The employer must perform a hazard assessment to determine the level of risk to which its employees are exposed and use that information to select the appropriate equipment to be provided. Depending on the height and types of structures in the area where the employer provides fire protection, the equipment could be a little as a rope, belt, and attachment devices.

The employer must also train employees in the techniques of self rescue. Many Fire Departments have the expertise in-house to provide this service, particularly in rural areas where building size and configurations may limit the risks addressed by the rule. Moreover, in rural areas rope work is part of high angle rescue work which a number of fire departments in mountainous areas provide. Individuals trained in high angle rescue techniques would require little or no extra training to meet the requirements of this proposed rule.

Training provided by the State Office of Fire Prevention and Control also covers the criteria involved. However, this office does not have sufficient staff resources to provide the training on a statewide basis. Some rope and rescue system manufacturers will provide training in their equipment; there will typically be a cost associated with this service, however.

Another option open to employers is to group together and hire a professional trainer to provide a train-the-trainer course for individuals from a number of departments who would then train the members of their own department. This method would make the expense of hiring a contractor a shared expense.

3. Costs:

There are two primary areas of cost imposed by the rule: the cost of purchasing and maintaining the equipment and the cost of providing the required training. The cost of the equipment would fluctuate by department, depending upon the risks identified in the risk assessment conducted by the Department and the equipment needed to address the risk. Each firefighter who is at risk of entrapment at elevation must be provided with properly fitted (belts and harnesses come in different sizes) self-rescue rope and other components such as a belt and carabiners. A rural fire department employer could reasonably outfit each employee covered by the rule for as little as \$100.00; if employers were to coordinate purchases and buy these items in bulk that cost could be reduced substantially. We should note that some of the manufactured systems cost as much as \$400.00. In most rural areas such expensive systems should not be necessary.

Costs associated with the provision of training in systems are discussed

above. If training is provided in-house, costs would be minimal or none at all. A professional trainer could be provided by a manufacturer "free of charge" if the employer purchases a sufficient number of units of equipment. [Note: although this is classified as a free service, it is really a service whose cost is included in the equipment purchase cost.] If the professional trainer's services are not provided along with the purchase, the charges for the trainer's time could range up to \$500.00.

4. Minimizing adverse impact:

The only adverse impact resulting from the proposed rule are the costs associated with compliance. As discussed previously, covered employers can try to minimize such costs through coordination with other fire departments to purchase equipment in bulk and through train the trainer sessions which will allow one or more members to deliver the training to their fellow firefighters.

5. Rural area participation:

The proposed rule was posted on the department web site along with a contact. Numerous emails and phone calls were taken during the 6 months it was posted.

Meetings were held with employer groups such The New York State Association of Fire Chiefs and Regional Fire Administrators from around the state. The rule was discussed with the Counsel for The Firemen's Association of the State of New York.

Meetings were also held with representatives of the Office of Fire Prevention and Control and with Department of State Counsel.

Comments from these meetings and contacts were used to develop the rule.

Job Impact Statement

This rule concerns the provision of safety ropes and system components for public sector Fire Fighters. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Notification of Incidents and Access to Records

I.D. No. MRD-14-09-00002-E

Filing No. 268

Filing Date: 2009-03-20

Effective Date: 2009-03-22

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

Action taken: Addition of section 624.8; and amendment of sections 624.1, 624.2, 624.3, 624.4, 624.5, 624.6 and 624.20 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 33.23 and 33.25; L. 2007, ch. 24

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

Specific reasons underlying the finding of necessity: Additional notifications will result in better monitoring, regarding whether the health and safety needs of the individuals are properly addressed and whether appropriate steps are being taken to address potentially harmful situations.

Subject: Notification of incidents and access to records.

Purpose: To conform regulations governing incidents to Jonathan's Law notification requirements and access to records provisions.

Substance of emergency rule: • Effective March 22, 2009. Replaces similar emergency regulations that were effective October 1 and December 30, 2007, and March 27, June 25, September 23, and December 22, 2008.

• No changes were made in the March 22, 2009 regulations compared to the December 22, 2008 regulations.

General:

• The regulations amend existing OMRDD regulations on incidents and abuse (Part 624).

• The regulations apply to all facilities and services operated, certified, authorized or funded through contract by OMRDD. This includes

residential facilities, day programs, HCBS waiver services, and Medicaid Service Coordination.

• New notification and disclosure requirements do not apply to events or situations which are not under the auspices of the agency, such as allegations of abuse by family members in private residences. Requirements that agencies intervene and take appropriate action in these events or situations are unchanged.

• The OMR 147(I) and OMR 147(A) are removed from the regulation. OMRDD is replacing these forms with a single revised form.

• The OMR 147 must be used for all reportable incidents, serious reportable incidents and allegations of abuse.

• Full documentation of compliance is required.

• Existing requirements are unchanged for notification to CQCAPD, law enforcement officials, Statewide Central Register of Child Abuse and Maltreatment, etc.

• For the Willowbrook class, agencies must continue to comply with the incident reporting requirements of the Willowbrook Permanent Injunction.

• An old requirement for a "written preliminary finding" within 24 hours of the occurrence or discovery has been eliminated. The OMR 148 or equivalent report on actions taken takes the place of the written preliminary finding.

• The use of a diagnostic procedure (e.g. x-ray) when the results are negative (nothing broken) is no longer considered a reportable injury.

• Service coordinators must be notified of all reportable incidents, serious reportable incidents and allegations of abuse whether or not the event or situation is "under the auspices" of the agency or sponsoring agency.

Regulations to implement Section 33.23 MHL:

• The regulations build on notification requirements in pre-existing OMRDD regulations, which required notification of serious reportable incidents and allegations of abuse to guardians, parents and advocates/correspondents.

• The following types of events/situations are subject to the new requirements:

- Reportable incidents in the categories of injury, medication error and death.

- Serious reportable incidents in the categories of injury, missing person, medication error and death.

- All allegations of abuse.

• Current notification requirements are maintained for serious reportable incidents which are in the other categories (restraint, possible criminal act, and sensitive situation). Notification must occur within 24 hours of completion of the OMR 147.

• Neither notification nor disclosure is required for reportable incidents in the category of sensitive situation or for events/situations which do not rise to the level of reportable incidents (e.g. "agency reportable incidents").

• The new requirements require notification to one of the following: guardian, parent, spouse or adult child.

• Exceptions:

- The guardian, parent, spouse or adult child objects to notification to himself or herself.

- The person receiving services is a capable adult who objects to the notification being made to someone else.

- The person who would otherwise be notified is the alleged abuser.

• If there is no guardian, parent, spouse or adult child (or they are unavailable), but the person has an advocate or correspondent, notification should be made to that individual in the same manner. Advocates/correspondents must also be offered a meeting and must be sent the report on actions taken. Upon request, advocates/correspondents must be sent the redacted OMR 147. (Note: the advocate or correspondent is not eligible to request disclosure of the investigation report and other investigation documents).

• If there is no guardian, parent, spouse or adult child (or they are

unavailable), and the person receiving services is a “capable adult” as defined in the regulations, the person receiving services must be notified. In addition, the person receiving services must be offered a meeting and must receive the report on actions taken.

- The notification must be by telephone or in person, or by other methods at the request of the recipient of the notice.
- The notification must be made within 24 hours of the completion of the OMR 147.
- The notice must include:
 - A description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any,
 - An offer to meet with the chief executive officer or designee, and
 - For allegations of abuse, an offer to provide information on the status and resolution of the allegation (this is a pre-existing requirement).
- Upon request, a copy of the OMR 147 reporting form must be provided to the person receiving services, guardian, parent, spouse, adult child, or advocate/correspondent. Records must be redacted.
- The agency must provide a written report on actions taken to address the incident or alleged abuse for every incident and allegation subject to the new notification process.
 - The report must be provided to the individual that was notified.
 - The report must include: any immediate steps taken in response to the incident or alleged abuse to safeguard the health or safety of the person receiving services, and a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.
 - The report must be on a form developed by OMRDD or a similar agency form.
 - The report must be provided within 10 days of the completion of the OMR 147.
 - The report on actions taken cannot include names of others involved in the incident/allegation or investigation or information tending to identify them.

Regulations to implement Section 33.25 MHL:

- The regulations require the release of records and documents pertaining to allegations and investigations into abuse under the auspices of the agency.
- Only guardians, parents, spouses and adult children who are considered to be a “qualified person” according to the definition in the Mental Hygiene Law, are eligible to receive records.
- If the otherwise eligible requestor is the alleged abuser he or she is not eligible to receive records.
- If the consumer is a capable adult and objects to the release of records, the otherwise eligible requestor is not eligible to receive records.
- Requests must be in writing.
- Documents and records must be released 21 days after the closure of the alleged abuse case or 21 days after the request, if the request is made after closure.

For purposes of determining when the 21 day clock begins, closure is considered the time when the standing committee has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive.

- Records must be redacted.
- Agencies are required to release records pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007.
- Agencies are also required to release records pertaining to allegations of abuse covering the period Jan. 1, 2003 to May 5, 2007. Qualified persons have until Dec. 31, 2010 to make these requests.
- Records may not be disseminated by recipients.

Redaction (applicable to the release of documents and records pursuant to Section 33.25 MHL and the OMR 147). The following should be redacted:

- Names or other information tending to identify people receiving services and employees. Redaction shall be waived if the employee or

person receiving services authorizes disclosure (unless redaction is needed because the information would tend to identify a different person whose identity is shielded by the regulations). The definition of employee is very inclusive, but only for the purposes of redaction of these records in compliance with the new law and the implementing regulations. It includes consultants, contractors, volunteers, family care providers and family care respite/substitute providers, and individuals who live in home of the provider.

- Names or other information tending to identify anyone who made a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation.

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 June 17, 2009.

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

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 620, OMRDD has on file a Negative Declaration with respect to this Action. OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

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

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

Section 33.23 of the Mental Hygiene Law, which requires specific incident notifications and the release of specified reports.

Section 33.25 of the Mental Hygiene Law, which requires the release of records and documents pertaining to allegations and investigations of abuse.

2. **Legislative Objectives:** These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), 33.23 and 33.25 of the Mental Hygiene Law. The promulgation of these amendments will provide a more extensive notification process for certain incidents and allegations of abuse. In addition, the amendments provide greater access by specified individuals to records and documents pertaining to allegations and investigations of abuse.

3. **Needs and Benefits:** Chapter 24 of the Laws of 2007 (MHL Sections 33.23 and 33.25), otherwise known as “Jonathan’s Law,” was signed by the Governor on May 5, 2007 and was effective immediately.

The regulatory amendments are necessary to implement the new laws and to make longstanding OMRDD regulations related to incidents and abuse consistent with the statutory requirements. In addition, these amendments clarify ambiguities in the law, as well as provide more specific direction and guidance to providers so that implementation is more effective and consistent statewide. Further, the regulations build on the notification process requirements established by statute to extend certain provisions to advocates and correspondents who are not “qualified persons” and to require compliance by all providers in the OMRDD system, not just “facilities” as specified in the law.

The new law and the associated regulations require providers to implement a more extensive notification process for certain incidents and all allegations of abuse. This notification process will provide timely information about incidents that affect the health or safety of a person receiving services to the following: a person’s guardian, parent, spouse, adult child or advocate/correspondent. In addition to an initial telephone notification, the individual will have access to the

initial incident/allegation of abuse report, will be provided a report on initial actions taken and will be offered the opportunity to meet with the agency Chief Executive Officer/DDSO Director (or a designee) to discuss the incident or allegation of abuse.

The law and implementing regulations also provide a qualified person with access to records and documents pertaining to allegations and investigations of abuse. For this purpose a qualified person is defined in Mental Hygiene Law 33.16 and may include: persons receiving services or who formerly received services; and guardians, parents, spouses and adult children of such persons. The regulations extend applicability of the new requirements from only events occurring "at a facility" as specified by statute to allegations of abuse occurring while individuals are receiving facility-based services at a location away from the facility. In addition, the regulations extend applicability to services in the OMRDD system which are not facility-based, such as at-home residential habilitation and supported employment. OMRDD considers that allegations of abuse by employees should be treated the same regardless of the type of service received or location of service delivery.

4. Costs: The amendments impose minor additional costs beyond the cost of complying with the new laws. Compliance with the new laws will likely require additional expenditures for personnel, paperwork, phone charges and postage. Although pre-existing OMRDD regulations already required notification of some types of incidents and allegations of abuse, the law requires notification (with its attendant costs) of additional incidents. In addition, the law requires that a report on actions taken be provided for each incident and allegation of abuse subject to the new notification requirements. Additional meetings may occur as a result of the mandated offer to hold a meeting. Lastly, documents and records must be provided upon request and must be redacted in accordance with the law.

While the statute limited the individuals being notified to "qualified persons," the regulations extended the new notification process requirements to include advocates and correspondents. While advocates and correspondents were required to be notified of some incidents by the pre-existing OMRDD regulations, minor additional costs will be incurred through both notification of additional incidents and through the additional features of the notification process imposed by Jonathan's Law, such as the provision of the report on actions taken.

In addition, the statute only applied to allegations of abuse occurring at a facility. However, providers in the OMRDD system operate many services which are not "facilities," such as service coordination, supported employment, and at-home residential habilitation. The OMRDD regulations extended the requirements of Jonathan's Law to include all services in the OMRDD system, as well as allegations of abuse when individuals are receiving facility-based services at a location away from the facility. This extension applies to both the notification process and the eligibility to request records and documents pertaining to allegations and investigations of abuse.

OMRDD is unable to quantify the modest additional costs that will be incurred by these extensions of the statutory requirements.

OMRDD will incur additional costs as a provider of state-operated services as noted above. These additional costs cannot be quantified.

OMRDD will use existing staff to administer this rule and does not anticipate any significant expenditure related to its administration. There are minimal additional expenditures related to informing and training providers of both Jonathan's Law and the implementing regulations.

There will be no additional costs to local governments.

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

6. Paperwork: Compliance with the new laws entails an increase in paperwork. The new law requires that a written report on actions taken be provided for every incident that is subject to the new requirements. OMRDD has developed a new form to assist agencies in providing this report. Agencies are also required to provide redacted incident reports upon request as a part of the notification process. Further, agencies are required to provide redacted records and documents pertaining to allegations and investigations into abuse. The regula-

tions add minimal new paperwork requirements to the statutory requirements by extending provisions related to the notification process to include advocates and correspondents, and extending requirements to encompass all services in the OMRDD system and incidents related to facility-based programs which occur in community settings with staff.

7. Duplication: The regulatory amendment does not duplicate existing state or federal requirements.

8. Alternatives: The law only requires the notification requirements to be made to a qualified person as defined in MHL 33.16. "Qualified persons" include only guardians, parents, spouse or adult child. OMRDD had considered limiting the applicability of the notification requirements to "qualified persons." However, OMRDD recognizes the valuable role played by siblings, family members, friends and others who are advocates and correspondents but who are not "qualified persons." OMRDD considers that individuals without a "qualified person" who have an advocate or correspondent should also be able to benefit from the additional notification process requirements. OMRDD consequently extended the new notification process requirements to include advocates/correspondents.

9. Federal Standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OMRDD filed similar emergency regulations effective on October 1 and December 30, 2007, and March 27, June 25, September 23, and December 22, 2008.

OMRDD intends to finalize regulations within the time frames provided for by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Effect on small business: These regulatory amendments will apply to providers of services that operate all programs certified, authorized or approved by OMRDD.

While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites (e.g. small residences) employ fewer than 100 employees at each site and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees would themselves be classified as small businesses.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: The new law required a variety of compliance activities. These activities include: providing telephone notice to a qualified person for certain incidents and allegations of abuse, offering a meeting with the agency's Chief Executive Officer or DDSO Director or a designee, and offering to provide a written report on actions taken. In addition, upon the request of a qualified person, documents and records pertaining to allegations and investigations of abuse must be released. All the above referenced documents must have names and identifying information redacted. The implementing regulations extend the requirements to advocates and correspondents, to non-facility based services and to situations when facility-based services are delivered at a location away from the facility. Agencies will need to make the changes needed for implementation in these situations where the regulatory requirements exceed the statutory requirements.

OMRDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, OMRDD has already developed a regulatory handbook on the implementation of 14 NYCRR Part 624. This handbook will be updated to reflect the new requirements outlined in these amendments.

3. Professional services: Modest additional professional services are required as a result of these amendments, due to the need for the involvement of legal professionals in redaction and interpretation of

the regulations, to the extent that the regulatory requirements exceed the statutory requirements. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no costs to local governments.

The amendments impose minor new compliance costs. There are minimal additional costs associated with implementation and compliance with the law. In the areas noted above where the regulatory requirements exceed the statutory requirements, these modest compliance costs will be increased as notification is required in new situations and in additional service types.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse impact: As stated in the Regulatory Impact Statement, the proposed regulation will have no fiscal effect on State or local governments, and minimal fiscal impact on regulated parties (including the state as a provider). Modest additional costs are necessary to the extent regulatory requirements exceed statutory requirements. OMRDD has reviewed and considered the approaches for minimizing economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. In order to minimize adverse economic impact, OMRDD has developed a standardized form for the report on actions taken. The use of this form will minimize staff resources devoted to completing the form, instead of each agency developing its own form or not using a form for this purpose.

7. Small business and local government participation: OMRDD convened a Jonathan's Law implementation workgroup which included representatives from provider associations. The group met on June 1, June 20 and November 7, 2007. Presentations were made to various groups including committees of the Cerebral Palsy Associations of New York State and the New York State Association of Residential and Community Agencies (NYSACRA). OMRDD staff presented at training sessions with hundreds of provider representatives hosted by NYSACRA on June 28 and July 20, 2007. OMRDD staff also presented at a training session hosted by the Long Island Alliance on August 23, 2007. In addition, OMRDD staff made a presentation at a meeting of the Conference of Local Mental Hygiene Directors on August 17, 2007. OMRDD also conducted a series of internal training sessions on October 3, October 11, October 18 and October 29, 2007. Informational mailings were sent to affected providers regarding the implementation of the new law on May 11 and May 15, 2007. A detailed informational mailing specifically discussing the emergency regulations was sent to providers and other interested parties on August 31, 2007. OMRDD also solicited comments from the Self-Advocacy Association, the Statewide Family Support Services Committee and the NYSARC Adult Services Committee. OMRDD informed all provider agencies, provider associations, and other interested parties (including parents, family members and individuals receiving services) of the October 1 and December 30, 2007 and March 27, June 25, September 23, and December 22, 2008 emergency regulations by mail. In addition, numerous questions and comments were received from voluntary providers, local government representatives and others at the events noted above and through individual contact.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). This finding is based on the fact that the proposed rule changes the way in which notifications are made regarding certain incidents and allegations of abuse. The proposed rule also provides greater access by qualified persons, including parents and legal guardians, to records and documents pertaining to allegations and investigations of abuse and mistreatment. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Job Impact Statement

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will

not have an adverse impact on jobs and/or employment opportunities and they may have a slightly positive impact on employment opportunities due to new features in the rule. This finding is based on the fact that the regulatory requirements exceed the statutory requirements of Jonathan's Law to require modest additional notifications and access to records as noted in the Regulatory Impact Statement. It is anticipated that providers will generally utilize existing staff to accomplish these tasks. In unusual circumstances, providers may find it necessary to hire or contract for additional staff.

Department of Motor Vehicles

NOTICE OF ADOPTION

Electronic Parking Tags Used to Identify a Vehicle for Parking or Security Purposes

I.D. No. MTV-52-08-00001-A

Filing No. 271

Filing Date: 2009-03-23

Effective Date: 2009-04-08

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

Action taken: Amendment of Part 174 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(1)

Subject: Electronic parking tags used to identify a vehicle for parking or security purposes.

Purpose: To display electronic parking tags on inside of windshield in the lower left hand corner without prior approval of Commissioner.

Text of final rule: Subdivisions (a), (b) and (c) of Part 174.5 are amended to read as follows:

(a) Subject to the limitations of this section, stickers identifying a vehicle for parking or security purposes may be placed on the inside of the windshield in the lower right hand without prior approval of the Commissioner. *Electronic parking tags may be placed on the inside of the windshield in the lower left hand corner without prior approval of the Commissioner.*

(b) Stickers or electronic parking tags may not be of a size that would interfere with visibility. The front surface of the sticker must be gummed so that it may be attached to the inside of the windshield.

(c) No vehicle may display more than two parking or security stickers or electronic parking tags, or combination thereof.

Subdivision (d) of Part 174.5 is repealed.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 174.5(a), (b), (c) and (d).

Text of rule and any required statements and analyses may be obtained from: Heidi A. Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

Revised Job Impact Statement

A revised Job Impact Statement is not submitted with this rule because no substantive changes were made.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-49-08-00016-A

Filing Date: 2009-03-18

Effective Date: 2009-03-18

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

Action taken: On March 12, 2009, the PSC approved a request filed by Windover Water Works to make a change in the rates and charges contained in its tariff schedule P.S.C. No. 1—Water, to become effective to April 1, 2009.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual operating revenues by \$1,260 or 32% and increase the balance of the Escrow Repair Account.

Substance of final rule: The Commission on March 12, 2009, adopted an order approving the request of Windover Water Works, to increase its annual operating revenues by \$1,260 or 32%, and to increase the maximum balance of its Escrow Repair Account from \$400 to \$1,512, effective April 1, 2009, 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.

(08-W-1349SA1)

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

Specific Multifamily and Multifamily Low-income Residential Electric Energy Efficiency Programs

I.D. No. PSC-14-09-00011-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 multifamily and multifamily low-income residential electric energy efficiency program proposals as a component of the Energy Efficiency Portfolio Standard.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Specific multifamily and multifamily low-income residential electric energy efficiency programs.

Purpose: To encourage electric energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, multifamily residential and multifamily low-income residential electric energy efficiency program proposals made in response to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008 [see Ordering Clauses 8, 10 & 17]. For potential independent program administrators that submitted updated proposals for programs in accordance with Ordering Clause 8 of the aforementioned June 23, 2008 Order, such submissions shall be considered as pre-filed comments responsive to this notice to the degree that they relate to the provision of electric energy efficiency programs for large industrial customers. The program proposals under consideration for this rule include the following:

1. Case 08-E-1127 - Consolidated Edison Company of New York, Inc., "Residential and Commercial Energy Efficiency Programs" dated September 22, 2008:

(a) Targeted Demand Side Management Program; (b) Commercial and Industrial Equipment Rebate Program; (c) Refrigerator Replacement Pilot Program; and (d) Steam Cooling Program.

2. Case 08-E-1129 - New York State Electric & Gas Corporation and Case 08-E-1130 - Rochester Gas and Electric Corporation, "Electric Program Plan of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation" dated September 22, 2008: (a) Residential/Non-Residential Multifamily Program.

3. Case 08-E-1132 - New York State Research and Development Authority, "Energy Efficiency Portfolio Program Administrator Proposal" dated September 22, 2008: (a) Electric Reduction in Master-metered Multi-family Building Program; (b) GeoThermal Heat Pump Systems Incentives Program; (c) Multi-family performance Program (MFPP) Expansion (electric portion); and (d) Solar Thermal Incentives Program.

4. Case 08-E-1133 - Niagara Mohawk Power Corporation d/b/a

National Grid, "Electric and Gas Energy Efficiency Program Proposals" dated September 22, 2008: (a) EnergyWise Program.

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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@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-1127SP1)

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

Authorization of the Use of Interest Earned on System-Wide Program Funds to Pay Its Share of the NYS Cost Recovery Fee

I.D. No. PSC-14-09-00012-P

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

Proposed Action: The Commission is considering a petition by New York State Research and Development Authority (NYSERDA) for authorization to use interest earned on System-Wide program funds to pay its share of the New York State Cost Recovery Fee.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Authorization of the use of interest earned on System-Wide program funds to pay its share of the NYS Cost Recovery Fee.

Purpose: To provide appropriate recovery of the New York State Cost Recovery Fee.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal made by the New York State Research and Development Authority (NYSERDA) in a filed document entitled "Petition for Modification" dated April 24, 2007. The proposal is to modify the requirements of an order in Case 04-E-0572 entitled "Order Adopting Three-Year Rate Plan" issued by the Public Service Commission on March 24, 2005. NYSERDA seeks authorization to use interest earned on System-Wide program funds to pay the share of the New York State Cost Recovery Fee that is allocable to the System-Wide program. The System-Wide program is an electric energy efficiency program administered by NYSERDA on behalf 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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@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.

(04-E-0572SP15)

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

Pay for a Consultant on Evaluation Methods Out of General SBC Funds Instead of Funds Dedicated to Specific Programs

I.D. No. PSC-14-09-00013-P

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

Proposed Action: The Commission is considering a petition by New York State Research and Development Authority (NYSERDA) for authorization to use System Benefits Charge (SBC) interest earnings to pay for a program evaluation consultant.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Pay for a consultant on evaluation methods out of general SBC funds instead of funds dedicated to specific programs.

Purpose: To enhance SBC program evaluation protocols.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal made by the New York State Research and Development Authority (NYSERDA) in a filed document entitled "Petition for Modification" dated October 17, 2008. The proposal is to modify the requirements of an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008. NYSERDA seeks authorization to use interest earned on System Benefits Charge (SBC) program funds, rather than monies budgeted to NYSERDA for the actual evaluation of energy efficiency programs, to pay the costs to obtain the services of an independent consultant to advise Staff of the Department of Public Service (Staff) on the scope and methods of evaluations and to assist Staff in its independent critique of the evaluation activities of NYSERDA and other program administrators.

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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@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.

(07-M-0548SP16)

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

Regulation of Revenue Requirements for Municipal Utilities by the Public Service Commission

I.D. No. PSC-14-09-00014-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 in part, the Village of Freeport's petition for a Declaratory Ruling and Policy Statement regarding the regulation of revenue requirements for municipal utilities.

Statutory authority: Public Service Law, sections 2(12), (16), 5(1), 30, 65(1), (2), (3), 66(1), (2), (3), (4), (5), (7), (8), (9), (10), (12)(a), (b), (c), (d), (e), (f), (14), 72, 76, 113(2) and 114

Subject: Regulation of revenue requirements for municipal utilities by the Public Service Commission.

Purpose: To determine whether the regulation of revenue requirements for municipal utilities should be modified.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant, deny or modify, in whole or in part,

the Village of Freeport's (Freeport) petition for a declaratory ruling and policy statement on the regulation of revenue requirements for municipal utilities. Freeport requests that the Commission issue a declaratory ruling that Article 4 of the Public Service Law does not require the Commission to continue the current, cost-of-service formula for determining the revenue requirements of municipal utilities. In addition, Freeport seeks the issuance of a Policy Statement promulgating the use of "benchmarking" to determine the revenue requirement of municipal utilities.

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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@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.

(09-E-0030SP1)

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

Specific Large Industrial Electric Energy Efficiency Programs

I.D. No. PSC-14-09-00015-P

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

Proposed Action: The Commission is considering large industrial (generally demand of 2MW and greater) electric energy efficiency program proposals as a component of the Energy Efficiency Portfolio Standard.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Specific large industrial electric energy efficiency programs.

Purpose: To encourage electric energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, large industrial (generally demand of 2MW and greater) electric energy efficiency program proposals made in response to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008 [see Ordering Clauses 8, 10 & 17]. For potential independent program administrators that submitted updated proposals for programs in accordance with Ordering Clause 8 of the aforementioned June 23, 2008 Order, such submissions shall be considered as pre-filed comments responsive to this notice to the degree that they relate to the provision of electric energy efficiency programs for large industrial customers. The program proposals under consideration for this rule include the following:

1. Case 08-E-1127 - Consolidated Edison Company of New York, Inc., "Residential and Commercial Energy Efficiency Programs" dated September 22, 2008: (a) Targeted Demand Side Management Program; (b) Commercial and Industrial Equipment Rebate Program; (c) Commercial and Industrial Custom Efficiency Program; and (d) Steam Cooling Program.

2. Case 08-E-1128 - Orange and Rockland Utilities, Inc., "Residential and Commercial Energy Efficiency Portfolio Programs" dated September 22, 2008: (a) Commercial and Industrial Existing Buildings Program.

3. Case 08-E-1129 - New York State Electric & Gas Corporation and Case 08-E-1130 - Rochester Gas and Electric Corporation, "Electric Program Plan of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation" dated September 22, 2008: (a) Non-Residential Commercial and Industrial (C&I) Rebate Program; and (b) Block Bidding Program.

4. Case 08-E-1132 - New York State Research and Development Authority, "Energy Efficiency Portfolio Program Administrator Proposal" dated September 22, 2008: (a) Benchmarking and Operations Efficiency Program; (b) Existing Facilities Program (electric portion); (c) Bidding Program (electric portion); (d) Commercial Loan Fund and Finance Program (electric portion); (e) Solar Thermal for Commercial and Industrial Applications Program (electric portion); (f) Statewide Combined

Heat and Power Performance Program; and (g) Waste Energy Recovery Program (electric portion).

5. Case 08-E-1133 - Niagara Mohawk Power Corporation d/b/a National Grid, "Electric and Gas Energy Efficiency Program Proposals" dated September 22, 2008: (a) Energy Initiative Program.

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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@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-1127SP2)

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

Minor Rate Filing

I.D. No. PSC-14-09-00016-P

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

Proposed Action: The Commission is considering a proposed filing by the Village of Groton to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 1—Electricity.

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

Subject: Minor Rate Filing.

Purpose: To increase annual electric revenues by approximately \$125,511 or 13.3%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by the Village of Groton to increase its electric revenues by approximately \$125,511 or 13.3%. The proposed filing has an effective date of September 1, 2009.

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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@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.

(09-E-0247SA1)

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

Delegation of Authority to the Secretary for Approval of Tariff Filing Suspensions for Utility Corporations

I.D. No. PSC-14-09-00017-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 delegate to the Secretary authority to approve tariff filing suspensions for Communications, Gas, Electric, Steam and Water Corporations.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 8, 66, 80, 89-c(1), (10) and 92

Subject: Delegation of authority to the Secretary for approval of tariff filing suspensions for utility corporations.

Purpose: To consider delegation of authority.

Substance of proposed rule: The Commission is considering delegating to the Secretary authority to approve suspensions of filed amendments to communication, gas, electric, steam and water corporation tariff schedule which propose changes in its rates, charges, rules and regulations. The tariff suspension for which approval would be delegated, would be limited to: (1) initial suspensions of 120 days; and (2) further suspension for a period not to exceed six months. Suspensions are ministerial in nature and considered appropriate for delegation. Initial suspensions allow time for Staff investigation, SAPA compliance, hearings and newspaper publication of the proposed changes. Further suspensions allow an additional six months if hearings and SAPA compliance cannot be concluded within the period of suspension. The Commission may approve or reject, in whole or in part, or modify the 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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@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.

(09-M-0207SA1)

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

Lightened Regulation of Electric and Steam Operations

I.D. No. PSC-14-09-00018-P

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

Proposed Action: The Commission is considering a petition dated March 18, 2009 from Saranac Power, L.P. requesting that the electric and steam operations of its 255 MW cogeneration facility in Plattsburg, New York be subject to lightened regulation.

Statutory authority: Public Service Law, sections 2(13), (22), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened regulation of electric and steam operations.

Purpose: Consideration of lightened regulation of electric and steam operations.

Substance of proposed rule: The Public Service Commission is considering a petition dated March 18, 2009 from Saranac Power, L.P. requesting that the electric and steam operations of its 255 MW cogeneration facility located in Plattsburg, New York, including its retail steam service to Georgia-Pacific Consumer Operations LLC, be subject to lightened regulation. 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. Brillling, 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. (09-M-0251SA1)

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

Long-term Debt Issuance of Up to \$30.0 Million in Promissory Notes

I.D. No. PSC-14-09-00019-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify, in whole or in part, a petition from United Water New York Inc. requesting authority pursuant to Public Service Law Section 89-f to issue up to \$30 million of long-term debt.

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

Subject: Long-term debt issuance of up to \$30.0 million in promissory notes.

Purpose: Consideration of approval for the long-term debt issuance of up to \$30.0 million in promissory notes.

Substance of proposed rule: In a petition dated March 4, 2009, United Water New York Inc. requests authority pursuant to Public Service Law, Section 89-f to issue long-term debt of up to \$30 million in the form of promissory notes. The Commission may adopt, reject or modify, in whole or in part, the authority requested.

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. Brillling, 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. (09-W-0229SA1)

State University of New York

NOTICE OF ADOPTION

State University of New York Tuition and Fees Schedule

I.D. No. SUN-05-09-00011-A

Filing No. 290

Filing Date: 2009-03-24

Effective Date: 2009-04-08

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

Action taken: Amendment of section 302.1 of Title 8 NYCRR.

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

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

Purpose: To amend the State University of New York Tuition and Fee Schedule to increase tuition for students in all programs.

Text or summary was published in the February 4, 2009 issue of the Register, I.D. No. SUN-05-09-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Marti Anne Elleremann, Senior Counsel, State University of New York, Office of the University Counsel, University Plaza, S-333, Albany, New York 12246, (518) 443-5400, email: Marti.Elleremann@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

**Susquehanna River Basin
 Commission**

INFORMATION NOTICE

Notice of Actions Taken at March 12, 2009, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on March 12, 2009, in Scranton, Pennsylvania, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: 1) approved, modified, and tabled certain water resources projects; 2) rescinded approvals for three water resources projects; and 3) adopted a "Records Processing Fee Schedule." Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: March 12, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: 1) recognition of Brig. Gen. Todd Semonite for his two and one half years of outstanding service as the United States Member of the Commission; 2) a special presentation by Mr. Bob Hainly, Asst. Director, USGS Pennsylvania Water Science Center, on obtaining real-time stream flow data using a stream velocity measurement method; 3) a report on the present hydrologic conditions of the basin indicating below normal precipitation and the development of dry conditions heading into Spring 2009; 4) adoption of an Annual Water Resources Program for 2009 implementing the recently revised comprehensive plan; 5) presentation of the William Jeanes Award to Robert Hughes, Director of the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation (EPCAMR) in recognition of his dedicated involvement in numerous projects to restore abandoned mines and improve the water quality of abandoned mine drainage degraded streams; 6) approval/ratification of three grants related to water resources management; 7) adoption of a set of "By-Laws" governing the internal organization, operation, and procedures of the Commission; and 8) tabling of three agenda items, including an "Application Fee Policy for Mine Drainage Withdrawals," an "Access to Records Policy," and revision of the FY 2010 budget. The Commission also heard counsel's report on legal matters affecting the Commission, during which the Commission authorized the execution of a proposed settlement agreement on a federal court appeal by East Hanover Township, Dauphin County, Pennsylvania, and tabled until the June 2009 meeting an administrative appeal by Mr. Mark Givler regarding Commission approval of a gas drilling project for Chief Oil & Gas, LLC.

The Commission also convened a public hearing and took the following actions:

Public Hearing – Projects Approved

1. Project Sponsor and Facility: ALTA Operating Company, LLC (Snake Creek), Liberty Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.099 mgd.
2. Project Sponsor and Facility: ALTA Operating Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Surface water withdrawal of up to 3.000 mgd.
3. Project Sponsor and Facility: Anadarko E&P Company LP (Pine Creek), Cummings Township, Lycoming County, Pa. Surface water withdrawal of up to 0.720 mgd.
4. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-1), Chapman Township, Clinton County, Pa. Surface water withdrawal of up to 0.720 mgd.
5. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-2), Renovo Borough, Clinton County, Pa. Surface water withdrawal of up to 0.720 mgd.
6. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-3), Nippenose Township, Lycoming County, Pa. Surface water withdrawal of up to 0.720 mgd.
7. Project Sponsor and Facility: Cabot Oil & Gas Corporation (for operations in Susquehanna and Wyoming Counties, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080904).
8. Project Sponsor: CAN DO, Inc. Project Facility: Corporate Center, Hazle Township, Luzerne County, Pa. Groundwater withdrawal of 0.547 mgd from Well 1.
9. Project Sponsor and Facility: Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, Pa. Consumptive water use of up to 0.999 mgd.
10. Project Sponsor and Facility: Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, Pa. Surface water withdrawal of up to 34.392 mgd from the North Branch Susquehanna River.
11. Project Sponsor and Facility: Cherokee Pharmaceuticals, LLC, Riverside Borough, Northumberland County, Pa. Groundwater withdrawal of 0.600 mgd for treatment of groundwater contamination.
12. Project Sponsor and Facility: Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, N.Y., and Bradford, Susquehanna, and Wyoming Counties, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080902).
13. Project Sponsor and Facility: Chief Oil & Gas LLC (for operations in Bradford County, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080911).
14. Project Sponsor and Facility: Chief Oil & Gas LLC (for operations in Lycoming County, Pa.) Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080934).
15. Project Sponsor and Facility: Chief Oil & Gas LLC (for operations in Clearfield County, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081201).
16. Project Sponsor and Facility: Chief Oil & Gas LLC (Sugar Creek), West Burlington Township, Bradford County, Pa. Surface water withdrawal of up to 0.053 mgd.
17. Project Sponsor and Facility: Citrus Energy (for operations in Wyoming County, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081204).
18. Project Sponsor and Facility: Delta Borough, Peach Bottom Township, York County, Pa. Groundwater withdrawal of 0.019 mgd from Well DR-2.
19. Project Sponsor and Facility: East Resources, Inc. (for operations in Elmira, N.Y., Area). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080603).
20. Project Sponsor and Facility: East Resources, Inc. (for operations in Mansfield, Pa., Area). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080608).
21. Project Sponsor and Facility: EOG Resources, Inc. (Bennett Branch-1, Sinnemahoning Creek), Jay Township, Elk County, Pa. Surface water withdrawal of up to 0.171 mgd.
22. Project Sponsor and Facility: EOG Resources, Inc. (Bennett Branch-2, Sinnemahoning Creek), Jay Township, Elk County, Pa. Surface water withdrawal of up to 0.152 mgd.
23. Project Sponsor and Facility: EOG Resources, Inc. (Chemung River-2), Athens Township, Bradford County, Pa. Surface water withdrawal of up to 0.322 mgd.
24. Project Sponsor and Facility: EOG Resources, Inc. (Sugar Creek-1), Burlington Borough, Bradford County, Pa. Surface water withdrawal of up to 0.099 mgd.
25. Project Sponsor and Facility: EOG Resources, Inc. (Sugar Creek-2), North Towanda Town, Bradford County, Pa. Surface water withdrawal of up to 0.099 mgd.
26. Project Sponsor and Facility: EOG Resources, Inc. (Susquehanna River-1), Athens Borough, Bradford County, Pa. Surface water withdrawal of up to 0.322 mgd.
27. Project Sponsor and Facility: EOG Resources, Inc. (Susquehanna River-2), Ulster and Sheshequin Townships, Bradford County, Pa. Surface water withdrawal of up to 0.322 mgd.
28. Project Sponsor and Facility: EOG Resources, Inc. (West Creek), Benzinger Township, Elk County, Pa. Surface water withdrawal of up to 0.096 mgd.
29. Project Sponsor and Facility: Fortuna Energy Inc. (for operations in Southern Tier of N.Y., and Tioga and Bradford Counties, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080601).
30. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Surface water withdrawal of up to 0.250 mgd.
31. Project Sponsor and Facility: Global Tungsten & Powders Corp., Towanda Borough, Bradford County, Pa. Consumptive water use of up to 0.170 mgd.
32. Project Sponsor: IBM Corp. Project Facility: Endicott, Village of Endicott, Broome County, N.Y. Groundwater withdrawal of 1.010 mgd for treatment of groundwater contamination.
33. Project Sponsor and Facility: J-W Operating Company (for operations in Cameron, Clearfield, and Elk Counties, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081211).
34. Project Sponsor and Facility: J-W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Surface water withdrawal of up to 0.499 mgd.
35. Project Sponsor: New Enterprise Stone & Lime Co., Inc. Project Facility: Ashcom Quarry, Snake Spring Valley Township, Bedford County, Pa. Modification of consumptive water use, groundwater and surface water withdrawal approval (Docket No. 20031204).
36. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (for operations in Potter and McKean Counties, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080921).
37. Project Sponsor and Facility: Range Resources – Appalachia, LLC (for operations in Bradford, Centre, Clinton, Lycoming, Sullivan, and Tioga Counties, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080931).
38. Project Sponsor and Facility: Rex Energy Corporation (for operations in Centre and Clearfield Counties, Pa.). Modification of

consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20080941).

39. Project Sponsor and Facility: Turm Oil, Inc. (for operations in Susquehanna County, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081223).
40. Project Sponsor and Facility: Ultra Resources (for operations in Tioga and Potter Counties, Pa.). Modification of consumptive water use to comport with new regulations effective on January 15, 2009 (Docket No. 20081228).
41. Project Sponsor and Facility: Ultra Resources (Pine Creek), Pike Township, Potter County, Pa. Surface water withdrawal of 0.430 mgd.
42. Project Sponsor and Facility: Water Treatment Solutions, LLC (West Branch Susquehanna River), Williamsport, Lycoming County, Pa. Surface water withdrawal of 0.100 mgd.

Public Hearing – Projects Tabled

1. Project Sponsor and Facility: ALTA Operating Company, LLC (DuBois Creek), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.010 mgd.
2. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-4), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 0.720 mgd.
3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.
4. Project Sponsor and Facility: EOG Resources, Inc. (Bennett Branch-3, Sinnemahoning Creek), Huston Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.290 mgd.
5. Project Sponsor and Facility: EOG Resources, Inc. (Chemung River-1), Chemung Town, Chemung County, N.Y. Application for surface water withdrawal of up to 0.322 mgd.
6. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Application for a withdrawal of up to 0.432 mgd from the Gordon Well.
7. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Applications for: 1) an out-of-basin diversion to the Delaware River Basin for water supply; 2) an existing into-basin diversion of wastewater of up to 1.100 mgd from the Delaware River Basin (existing water sources in the Delaware Basin are the Kaufman Reservoir that has an allocation of 0.500 mgd and the Mount Laurel Reservoir that has an allocation of 0.600 mgd); and 3) inclusion of the project in the SRBC Comprehensive Plan.

Public Hearing – Project Withdrawn

1. Project Sponsor and Facility: EOG Resources, Inc. (Kersey Run), Jay Township, Elk County, Pa. Application for surface water withdrawal of up to 0.070 mgd.

Public Hearing – Rescinded Project Approvals

1. Project Sponsor: Harristown Development Corporation. Project Facility: Strawberry Square (Docket No. 20030410), City of Harrisburg, Dauphin County, Pennsylvania.
2. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C. (Docket No. 20080301), Broome, Tioga, and Chemung Counties, N.Y.
3. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C. (Docket No. 20080302), Town of Windsor, Broome County, and Town of Horseheads, Chemung County, N.Y.

Public Hearing – Records Processing Fee Schedule

Following a brief hearing, the Commission adopted a “Records Processing Fee Schedule” to recover costs associated with meeting records requests.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: March 23, 2009.

Thomas W. Beauduy,
Deputy Director.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Safety Net Assistance Application Supplement

I.D. No. TDA-14-09-00009-P

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

Proposed Action: Repeal of section 350.4(a)(7); and amendment of section 350.4(b) and (c)(1) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 158(1)(a)

Subject: Safety Net Assistance Application Supplement.

Purpose: To eliminate the requirement that public assistance recipients complete a safety net assistance (SNA) application supplement to transition from federally funded assistance to SNA when they reach the State 60-month time limit for federally funded assistance.

Text of proposed rule: Repeal paragraph (7) of subdivision (a) of section 350.4.

Amend subdivision (b) of section 350.4 to read as follows:

(b) The State-prescribed form is not required to be completed under the following circumstances: [Except as required under paragraph (a)(7) of this section, for] *For* a person continuously in receipt of some form of assistance or care from the same district, the application form completed at the time of original application will suffice. Transfers or reclassifications, except as required under subdivision (a) of this section, need not be confirmed by completion of a new State-prescribed form. When [a case] *an application* has been denied, reapplication within 30 days does not require a new State-prescribed form.

Amend paragraph (1) of subdivision (c) of section 350.4 to read as follows:

(1) In family applications, both [the husband and wife] *spouses* shall sign. In situations where [the man] *a parent* in the family is not married to the [mother] *other parent*, both [the mother and the man] *parents*, if [he is] *they are* to be included in the grant, shall sign the application form.

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.

Regulatory Impact Statement

1. Statutory authority:

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

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

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

Section 158(1)(a) provides eligibility for safety net assistance (SNA) to individuals who are financially needy and who reside in a family that is ineligible for federally funded assistance because an adult in the family has exceeded the maximum time limit for receipt of such assistance.

2. Legislative objectives:

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

3. Needs and benefits:

This proposed rule eliminates the regulatory requirement that public assistance recipients complete an SNA application supplement to transition from federally funded assistance to SNA when they reach the State 60-month time limit for federally funded assistance. There are three regulatory revisions being made as part of this proposed rule. These are addressed individually below as A, B and C:

A. The first change is to repeal section 350.4(a)(7).

Currently, the regulations require that SNA application supplements be completed by able-bodied adults who want to receive SNA after reaching the State 60-month time limit for federally funded assistance. This requirement went into effect September 2001 since adults began to reach the State 60-month time limit at the end of November 2001. The SNA application supplement was an interim procedure to safeguard against the inappropriate receipt of benefits by individuals who were ineligible for Temporary Aid to Needy Families (TANF) federally funded assistance, to increase client contacts in order to encourage self-sufficiency and to ensure that all SNA program requirements were met. Since 2001, policies, procedures and systems changes have been developed, enacted and enforced that eliminate the need for the SNA application supplement.

Since the interim use of the SNA application supplement began, client contact has been increased significantly. Some examples of these additional contacts are the following:

- Required face-to-face recertifications every six months beginning at the 48th month of the time limit count.
- Notices generated and mailed by the Time Limit Tracking System to clients when the State count is at 48, 54 and 58 months. These notices encourage clients to plan and work toward self-sufficiency, and they advise clients that the districts will assist them in developing plans for self-sufficiency.
- Required face-to-face reassessment interviews between the 54th and 60th months of the time limit count.
- Required employment assessments to evaluate employability and promote self-sufficiency. Districts typically reassess clients annually, and many districts provide formal reassessments every three months.
- Sanctioned households are provided additional contacts through the Intensive Case Services programs, and those persons who remain in sanctioned status are often required to meet with caseworkers on a monthly basis.

B. The second change is to amend section 350.4 (b) to delete the reference to section 350.4 (a) (7) presently set forth in that subdivision.

C. The third change is to make a technical amendment to section 350.4 (c) (1) to make the paragraph gender neutral.

4. Costs:

Currently, approximately 570 cases per month reach the State 60-month time limit for federally funded assistance. Approximately 68.5% of these cases are converted into SNA cases, 21% remain on federally funded assistance, and 10.5% leave assistance. However, all of the case conversions are now done automatically, and the districts are not utilizing the supplemental application process. As a result, there will be no fiscal impact due to these regulatory changes.

5. Local government mandates:

These amendments will not impose any programs, services, duties or responsibilities upon the districts. Instead the amendments will remove an unnecessary regulatory requirement.

6. Paperwork:

The elimination of the SNA application supplement will increase administrative ease for the districts and support paperwork reduction. There will be no additional forms required to implement this proposed rule.

7. Duplication:

These proposed amendments do not duplicate, overlap or conflict with any existing State or federal regulations.

8. Alternatives:

The alternative is not to amend section 350.4 and to require able-bodied

TANF funded recipients who have exceeded the State time limit to complete an SNA application supplement as a condition of SNA eligibility. This requirement is an unnecessary administrative burden to both the districts and recipients, since safeguards that are more efficient and effective are in place to ensure SNA eligibility. The requirement to complete the SNA application supplement duplicates these safeguards.

9. Federal standards:

These proposed amendments do not conflict with federal standards for public assistance.

10. Compliance schedule:

There is no compliance schedule. Districts will be able to comply with the proposed rule on its effective date.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rule will not affect small businesses, but it will impact the fifty-eight (58) districts in the State.

2. Compliance requirements:

Currently, the regulations require that SNA application supplements be completed by able-bodied adults who want to receive SNA after reaching the 60-month time limit for federally funded assistance. Several years ago OTDA began to automatically convert cases from TANF funded assistance to SNA at the State 60-month time limit to ensure that federal TANF requirements were being met and that cases did not receive TANF funded assistance after 60 months. Although the completion of the SNA application supplement is not a TANF requirement, it was an element examined during the TANF review process. The results of the TANF reviews found that districts were relying on the automatic conversions and therefore were not using the SNA application supplement. Once a family has been converted to SNA, the district cannot require them to complete the SNA application supplement.

Since the systematic conversion from TANF funded assistance to SNA is now in place, there will be no compliance requirements when the proposed rule is filed as the necessary mechanisms already exist.

3. Professional services:

The proposed amendments will not require districts to hire additional professional services.

4. Compliance costs:

Currently, approximately 570 cases per month reach the State 60-month time limit for federally funded assistance. Approximately 68.5% of these cases are converted into SNA cases, 21% remain on federally funded assistance, and 10.5% leave assistance. However, all of the case conversions are now done automatically, and the districts are not utilizing the supplemental application process. As a result, there will be no fiscal impact due to these regulatory changes.

5. Economic and technological feasibility:

All districts have the economic and technological ability to comply with these proposed amendments.

6. Minimizing adverse impact:

There will be no adverse economic impact on the districts.

7. Small business and local government participation:

During a telephone conference call on June 5, 2007, the Human Resources Administration was advised of this proposal. Several districts outside of New York City were informally asked about the proposal when OTDA had telephone contact with them during the regular course of business. No objections to this proposal were expressed.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendments will affect the forty-four (44) rural districts in the State.

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

The rural districts will no longer require the completion of the SNA application supplement by able-bodied adults who want to receive SNA after reaching the State 60-month time limit for federally funded assistance. Since current policies and procedures provide safeguards to help ensure that SNA eligibility requirements are met, most districts no longer use the SNA application supplement. Thus the proposed amendments will require no further action from most districts.

3. Costs:

The proposed amendments will not impose initial capital costs or any annual costs upon the rural districts to comply with the rule.

4. Minimizing adverse impact:

The proposed amendments will not have an adverse impact on the rural districts.

5. Rural area participation:

Several rural districts were informally asked about this proposal when OTDA had telephone contact with them during the regular course of business. No objections to this proposal were expressed.

Job Impact Statement

A Job Impact Statement is not required for the proposed rule. 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 rule will not affect in any real way the jobs of the workers in the districts. Thus the changes will not have any adverse impact on jobs and employment opportunities in the State.

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

Employment Programs

I.D. No. TDA-14-09-00010-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 sections 351.2(j), 352.30(d)(2), (3), 369.2(d)(2), 370.2(c)(6)(i), (vi), 372.2(c), 387.14(a)(5)(ii)(c), 403.1(d)(1)(iii) and (2)(i) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and title 9-B of art. 5; and L.2005, ch. 57, part C

Subject: Employment Programs.

Purpose: Update references from the former Title 12 NYCRR Part 1300, which was repealed and replaced by Title 18 NYCRR Part 385.

Text of proposed rule: Subdivision (j) of section 351.2 is amended as follows:

(j) An applicant for public assistance must comply with work requirements set forth in Part [1300] 385 of *this Title* [12 NYCRR].

Paragraph (2) of subdivision (d) of section 352.30 is amended as follows:

(2) When an individual who is required to be in the public assistance household pursuant to subdivision (a) of this section, or who is the caretaker of a dependent child, fails to comply with the requirements of section 351.2 (i) of this Title or willfully and without good cause fails or refuses to comply with the requirements of Part [1300] 385 of *this Title* [12 NYCRR], the public assistance benefits otherwise available to the household of which such individual is a member will be reduced pro rata.

Paragraph (3) of subdivision (d) of section 352.30 is amended as follows:

(3) When an individual who is a member of a household without dependent children fails to comply with the requirement of section 351.2(i) of this Title, or willfully and without good cause fails or refuses to comply with the requirements of Part [1300] 385 of *this Title* [12 NYCRR], the public assistance benefits otherwise available to the household of which the individual is a member will be reduced pro rata.

Paragraph (2) of subdivision (d) of section 369.2 is amended as follows:

(2) The [mother] *parent* or other caretaker relative may be considered available for employment in accordance with [Part] *Parts 385 and 388* of this Title [and Part 1300 of Title 12 NYCRR].

Subparagraph (i) of paragraph (6) of subdivision (c) of section 370.2 is amended as follows:

(i) [Family] *Families* who have received FA and other assistance funded under Public Law 104-193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) for periods of time equal to the maximum durational limits in section 369.4 (d) of this Title.

Subparagraph (vi) of paragraph (6) of subdivision (c) of section 370.2 is amended as follows:

(vi) Members of a household in which the head of household or an adult household member fails to comply with an alcohol or substance abuse rehabilitation program in accordance with section 351.2(i) of this Title.

Subdivision (c) of section 372.2 is amended as follows:

(c) Assistance provided under this Part must not duplicate public assistance for which a person is eligible or would be eligible but for a sanction for violations of the requirements of Part [1300] 385 of *this Title* [12 NYCRR] or other requirements of State law or regulations.

Clause (c) of subparagraph (ii) of paragraph (5) of subdivision (a) of section 387.14 is amended as follows:

(c) failure to comply with the work requirements in accordance with [12 NYCRR 1300.3] *section 385.3 of this Title*.

Subparagraph (iii) of paragraph (1) of subdivision (d) of section 403.1 is amended as follows:

(iii) child care services to a family which has applied for or is receiving public assistance when such services are needed for a child under 13 years of age in order to enable the child's parent(s) or caretaker relative(s) to participate in activities required by the social services official including orientation, assessment or work activities as defined [12 NYCRR] *in Part [1300] 385 of this Title*;

Subparagraph (i) of paragraph (2) of subdivision (d) of section 403.1 is amended as follows:

(i) child care services for a family which has applied for or is receiving public assistance when such services are needed for a child aged 13 or older who has special needs or is under court supervision in order to enable the child's custodial parent or caretaker relative to participate in activities required by the social services district including orientation, assessment or work activities as defined in [12 NYCRR 1300.9] *Part 385 of this Title*;

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

The purpose of the proposed rule is solely to correct technical matters in Title 18 NYCRR. This rule updates references from the former Title 12 NYCRR Part 1300, which was repealed and replaced by Title 18 NYCRR Part 385 on March 15, 2006. Title 18 NYCRR Part 385 now sets forth the provisions and requirements of the public assistance and food stamp employment programs.

This rule also corrects grammatical errors and clarifies a reference from "alcohol substance abuse rehabilitation program" to "alcohol or substance abuse rehabilitation program".

It has been determined that no person is likely to object to the adoption of this rule as written. This rule is simply correcting technical matters and will help make Title 18 NYCRR more comprehensible to the public.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the jobs of the persons making the decisions required by the proposed amendments will not be affected in any real way. Thus the changes will not have any impact on jobs and employment opportunities in the State.