

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 Agriculture and Markets

NOTICE OF ADOPTION

Certification of Seed

I.D. No. AAM-35-08-00011-A

Filing No. 105

Filing Date: 2009-01-27

Effective Date: 2009-02-11

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

Action taken: Repeal of Part 96 and addition of new Part 96 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 141 and 142

Subject: Certification of seed.

Purpose: To establish general seed certification standards.

Text or summary was published in the August 27, 2008 issue of the Register, I.D. No. AAM-35-08-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Robert Mungari, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

Additional matter required by statute: Incorporation by Reference Certification's for each of the three referenced documents. Two bound copies of each of the three referenced documents.

Assessment of Public Comment

1. Comment: Comment was received supporting the proposed regulations and the uniformity in regulation that this regulatory change will create.

Agency response: The Department agrees with the comment.

2. Comment: Comment was received expressing support for the cooperative nature of this regulatory process and indicating that the drafting and review of these regulations facilitate compliance with other states' regulations and with federal regulations.

Agency response: The Department agrees with this comment.

3. Comment: Comment was received asking that the State not forget the organic growers who need special consideration; whose specific concerns are not addressed in the proposed regulations and who have a difficult time obtaining quality seed compliant with organic requirements.

Agency response: The Department believes that the issue of organic seed falls outside the scope of the current rule making, which deals with general seed certification standards, and that if it is determined that additional rules are required for organic seed they should be the subject of a separate rule making.

Department of Audit and Control

NOTICE OF ADOPTION

Provides Uniform Rules and Procedures to be Followed for the Scheduling of and Conduct of Certain Retirement Hearings

I.D. No. AAC-47-08-00001-A

Filing No. 75

Filing Date: 2009-01-22

Effective Date: 2009-02-11

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

Action taken: Repeal of Part 317 and addition of new Part 317 to Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 74 and 374

Subject: Provides uniform rules and procedures to be followed for the scheduling of and conduct of certain retirement hearings.

Purpose: To provide consistency and expediency in the conduct of hearings held to review applications for retirement allowances.

Text or summary was published in the November 19, 2008 issue of the Register, I.D. No. AAC-47-08-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua-Legislative Counsel, Office of the State Comptroller, 110 State Street 14 floor-Legal Services, Albany, NY 12236, (518) 473-4146, email: JElacqua@osc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Consumer Protection Board

NOTICE OF ADOPTION

Access to Records

I.D. No. CPR-49-08-00001-A

Filing No. 76

Filing Date: 2009-01-22

Effective Date: 2009-02-11

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

Action taken: Amendment of sections 4600.5, 4600.7 and 4600.9 of Title 21 NYCRR.

Statutory authority: Public Officers Law, sections 87 and 89

Subject: Access to records.

Purpose: To introduce consistency with State statutes.

Text or summary was published in the December 3, 2008 issue of the Register, I.D. No. CPR-49-08-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa Harris-Eglin, Deputy Executive Counsel, Consumer Protection Board, Five Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-3514, email: lisa.harris@consumer.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. 96

Filing Date: 2009-01-26

Effective Date: 2009-01-26

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. Subsequently, in response to public comment, the Department is now 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, and thereafter, 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 stakehold-

ers 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 a Notice of Revised Rule Making was published in the State Register on October 22, 2008. It was anticipated that the proposed amendment would be presented for adoption as a permanent rule at the December 15-16, 2008 Regents meeting, with an effective date of January 8, 2008. However, because the proposed amendment is being substantially revised again to further extend the initial effective date for required use of the State forms, pursuant to the State Administrative Procedure Act, the proposed amendment cannot be adopted as a permanent rule until after publication of a second Notice of Revised Rule Making in the State Register, and expiration of a 30-day public comment period on the revised rule making. It is anticipated that the Notice of Revised Rule Making will be published in the State Register no later than January 28, 2009. The next available meeting of the Board of Regents, after expiration of the 30-day public comment period, is scheduled for March 16-17, 2009. 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 emergency rule which took effect on October 28, 2008 will expire on January 25, 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 (notice of recommendation). Furthermore, the Department has determined that the initial effective date for required use of the State forms should be further extended to begin with the 2011-12 school year, as discussed above, to provide sufficient time for the Department to incorporate changes to the proposed form based on public comment; and to offset unintended fiscal implications of the conversion.

Therefore, emergency action is necessary now for the preservation of the general welfare in order to extend the initial effective date for required use of State forms for IEPs developed for, and meeting notices and prior written notices (notices of recommendation) issued during, the 2011-12 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 on January 1, 2009.

It is anticipated that the emergency rule will be presented for adoption as a permanent rule at the March 16-17, 2009 meeting of the Board of Regents, which is the first meeting scheduled after expiration of the 30-day public comment period for a revised rule making.

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 January 26 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 January 26, 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 January 26, 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 March 26, 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Access to Records

I.D. No. ENV-50-08-00003-A

Filing No. 97

Filing Date: 2009-01-27

Effective Date: 2009-02-11

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

Action taken: Addition of sections 616.2(c), 616.5(e), (f), (g), 616.8(i) and 616.9(b)(3)(i) - (iv); amendment of sections 616.3(a)-(c), 616.5, 616.8(a), (d)-(h), 616.9(b)(2), (3), 616.21(b), 616.23(a), 616.28(a); and repeal of section 616.23(b) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 3-0301(2)(a); Public Officers Law, section 87, 89, 94, 95 and 96; and L. 2005, ch. 22

Subject: Access to Records.

Purpose: To correct updated information, clarify protocols and incorporate new legislation in regards to access to agency records.

Text or summary was published in the December 10, 2008 issue of the Register, I.D. No. ENV-50-08-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Dena N. Putnick, Esq., Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1500, (518) 402-9185, email: dnpntnic@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Controlled Substances Data Submissions

I.D. No. HLT-49-08-00013-E

Filing No. 77

Filing Date: 2009-01-23

Effective Date: 2009-01-23

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

Action taken: Amendment of sections 80.2, 80.23, 80.67, 80.68, 80.69, 80.71, 80.73, 80.74, 80.132 and 80.134 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3308(2)

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis as authorized by Section 21 of the Public Health Law because immediate adoption is necessary to protect the public health from the threat posed by prescription drug abuse. Statistics from the National Institute on Drug Abuse indicate that the abuse of prescription pain relievers, stimulants, sedatives, and depressants is second only to the abuse of marijuana. The federal Drug Abuse Warning Network reports that emergency room visits due to abuse of prescription drugs are more than the visits due to abuse of cocaine and heroin combined. Experts in addiction medicine estimate that for every person addicted to heroin, there are two persons addicted to prescription narcotics. The trafficking in prescription controlled substances increases the threat to the public health by exponential proportions.

Immediate adoption of these regulations is necessary to protect the public health from an alarming increase in the non-medical use of prescription controlled substances, by both adults and children. The emergency regulations will provide immediate enhancements to the monitoring capability of the Official Prescription Program to detect and prevent drug diversion by allowing the Department to immediately begin more efficient monitoring of the acquisition of controlled substances by healthcare professionals authorized to possess them for legitimate medical use. Such monitoring will detect non-legitimate use and protect the public health from professionals who are impaired by their own drug abuse or traffic in drugs for profit. The regulations will also immediately allow practitioners increased flexibility to treat chronic pain from conditions other than diseases and afford hospice patients with more time to partial fill their controlled substance prescriptions to better meet their medication needs at this crucial stage in their lives.

Immediate adoption of these regulations is also necessary to facilitate more humane euthanasia of animals in animal control facilities through the utilization of additional drugs. Immediate adoption is also necessary to bring Part 80 regulations regarding euthanasia of animals in conformity with statute. Section 3305(1)(d) of the Public Health Law was previously enacted to authorize the safe and efficient use of ketamine hydrochloride and sodium pentobarbital for euthanasia in animal shelters, however, regulations implementing the statute were not promulgated at the time.

Subject: Controlled Substances Data Submissions.

Purpose: To govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within NYS.

Text of emergency rule: Section 80.2, subdivision (a), paragraph (6), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.2 Exemptions.

(a) Pursuant to section 3305 of the Public Health Law, the provisions of this Part restricting the possession of controlled substances shall not apply to:

* * *

(6) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing sodium pentobarbital to registered and certified personnel, to euthanize animals and ketamine hydrochloride to anesthetize animals prior to euthanasia.

* * *

Section 80.23, a new subdivision (f), of Title 10 NYCRR is hereby added to read as follows:

Section 80.23 - Records and reports

* * *

(f) Reports. Manufacturers and distributors shall report to the Department, in a manner approved by the Department, information from the sale of controlled substances. Such information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the Department. The information filed with the Department shall include, but not be limited to:

(i) the manufacturer's or distributor's name, address, phone number, DEA registration number and controlled substance license number issued by the Department;

(ii) the name, address and DEA registration number of the entity to whom the controlled substance was sold;

(iii) the date of the sale of the controlled substance;

(iv) the name and National Drug Code (NDC) of the controlled substance sold; and

(v) the number of containers and the strength and metric quantity of controlled substance in each container of controlled substance sold.

Section 80.67, subdivision (d), subparagraph (1), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.67 - Schedule II and certain other substances

* * *

(d)(1) A practitioner may issue a prescription for up to a three month supply of a controlled substance, including chorionic gonadotropin, or up to a six month supply of an anabolic steroid if used in accordance with the directions for use, provided that the prescription has been issued for the treatment of:

(i) panic disorders, designated as code A;

(ii) attention deficit disorder, designated as code B;

(iii) chronic debilitating neurological conditions characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, designated as code C;

(iv) relief of pain in patients suffering from conditions or diseases known to be chronic [and] or incurable, designated as code D;

(v) narcolepsy, designated as code E; or

(vi) hormone deficiency states in males, gynecologic conditions that are responsive to treatment with anabolic steroids or chorionic gonadotropin, metastatic breast cancer in women, anemia and angioedema, designated as code F.

* * *

Section 80.68, subdivision (d) of Title 10 NYCRR is hereby amended to read as follows:

Section 80.68 - Emergency oral prescriptions for schedule II substances and certain other controlled substances

* * *

(d)(1) The pharmacist filling the prescription shall endorse upon the prescription the date of delivery, and his/her signature.

(2) The endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. The prescription information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the Department, not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

(i) pharmacy prescription number;

(ii) pharmacy's National Identification Number;

(iii) patient name;

(iv) patient address, including street, city, state, zip code;

(v) patient date of birth;

(vi) patient's sex;

- (vii) date prescription filled;
- (viii) metric quantity;
- (ix) national drug code number of the drug;
- (x) number of days supply;
- (xi) prescriber's Drug Enforcement Administration (DEA) number;
- (xii) date prescription written; [and]
- (xiii) serial number of official prescription form or an identifier designated by the department[.]; *and*
- (xiv) *payment method.*

Section 80.69, subdivision (d), subparagraph (1), of Title 10 NYCRR is hereby amended to read as follows:

80.69 Schedule III, IV and V substances.

- (d)(1) A practitioner may issue a prescription for up to a three month supply of a controlled substance if used in accordance with the directions for use, provided that the prescription has been issued for the treatment of:
- (i) panic disorders, designated as code A;
 - (ii) attention deficit disorder, designated as code B;
 - (iii) chronic debilitating neurological conditions characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, designated as code C;
 - (iv) relief of pain in patients suffering from *conditions or diseases* known to be chronic [and] *or* incurable, designated as code D;
 - (v) narcolepsy, designated as code E; or
 - (vi) hormone deficiency states in males, gynecologic conditions that are responsive to treatment with anabolic steroids or chorionic gonadotropin, metastatic breast cancer in women, anemia and angioedema, designated as code F.

Section 80.71, subdivision (e), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.71 Practitioner; dispensing controlled substances

(e) The practitioner shall submit dispensing information, for all controlled substances dispensed, electronically to the department utilizing a transmission format acceptable to the department by not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

- (1) *dispenser* [practitioner] identifier;
- (2) patient name;
- (3) patient address, including street, city, state, ZIP code;
- (4) patient date of birth;
- (5) patient's sex;
- (6) date controlled substance dispensed;
- (7) metric quantity;
- (8) national drug code number of the drug;
- (9) number of days supply; [and]
- (10) prescriber's Drug Enforcement Administration (DEA) number[.]; *and*
- (11) *payment method.*

Section 80.73, subdivision (f) and subdivision (l), paragraph (5), of Title 10 NYCRR are hereby amended to read as follows:

Section 80.73 - Pharmacists; dispensing schedule II substances and certain other controlled substances

(f) The endorsed official New York State prescription shall be retained by the proprietor of the pharmacy for a period of five years. The prescription information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the department, not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

- (1) pharmacy prescription number;
- (2) pharmacy's national identification number;
- (3) patient name;
- (4) patient address, including street, city, state, ZIP code;
- (5) patient date of birth;
- (6) patient's sex;
- (7) date prescription filled;
- (8) metric quantity;
- (9) national drug code number of the drug;

- (10) number of days supply;
- (11) prescriber's Drug Enforcement Administration number;
- (12) date prescription written; [and]
- (13) serial number of official prescription form, or an identifier designated by the department;
- (14) *payment method;*
- (15) *number of refills authorized; and*
- (16) *refill number.*

(l) A pharmacist may partially fill an official New York State prescription for a schedule II controlled substance or those schedule III or schedule IV controlled substances listed in section 80.67(a) of this Part provided that:

(5) The official New York State prescription shall be valid for a period not to exceed 30 days from the date the prescription was issued by the practitioner unless terminated sooner upon notification from the practitioner of the discontinuance of medication. All partial fillings filled under subdivision (1) of this section must occur within 30 days from the date the prescription was issued[.], *except that partial fillings of prescriptions issued for more than a 30 day supply for patients residing in a residential healthcare facility or for patients enrolled in a hospice program that is licensed or approved by the Department must occur within 60 days from the date the prescription was issued.*

Section 80.74, subdivision (e), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.74 - Pharmacists; dispensing schedule III, IV and V controlled substances

(e) The pharmacist filling the official prescription shall endorse on such prescription his/her signature, the date of filling, and the number of the prescription under which it is recorded in the pharmacy prescription file. Such endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. Prescription information from the [original] filling of such prescription shall be filed with the department in accordance with section 80.73(f) of this Part.

Section 80.132, subdivision (a), paragraph 14, of Title 10 NYCRR is hereby amended to read as follows:

Section 80.132 Hypodermic syringes and needles; designation of persons or classes of persons.

(14) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing (i) sodium pentobarbital to registered and certified personnel to euthanize animals, *and* (ii) *ketamine hydrochloride to registered and certified personnel to anesthetize animals prior to euthanasia;*

Section 80.134, subdivision (a), paragraphs (3) and (4) of Title 10 NYCRR are hereby amended to read as follows:

Section 80.134. Authorization for the purchase, possession and dispensing of *ketamine hydrochloride only to anesthetize animals for euthanasia, and of sodium pentobarbital to euthanize animals.*

(3) Solution shall mean:

- (i) a premixed solution of sodium pentobarbital, manufactured only and specifically for the euthanasia of animals, which contains such other ingredients as to place such solution within schedule III of the Controlled Substances Act (article 33, Public Health Law);
- (ii) *schedule II sodium pentobarbital; and*
- (iii) *ketamine hydrochloride only for the purpose of anesthetizing animals for euthanasia.*

(4) An agent is a person or persons other than a licensed veterinarian appointed by the incorporated society or municipal animal control facility, and duly registered with the department, authorized to purchase, possess and dispense (i) *ketamine hydrochloride only to anesthetize animals for euthanasia, and* (ii) sodium pentobarbital to euthanize animals.

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. HLT-49-08-00013-P, Issue of December 3, 2008. The emergency rule will expire March 23, 2009.

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

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purposes and intent. Section 21 of the Public Health Law authorizes the Commissioner to promulgate emergency regulations in furtherance of Section 21, which expanded the Official Prescription Program, the Department's Prescription Drug Monitoring Program (PDMP).

Section 3305(1)(d) authorizes the Department to adopt regulations that provide for the safe and efficient use of ketamine hydrochloride to anesthetize animals only as part of the euthanasia procedure, and sodium pentobarbital to euthanize animals, by incorporated societies for the prevention of cruelty to animals and animal control facilities.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. The legislative purposes of Article 33 are to combat the illegal use of and trade in controlled substances and to allow the legitimate use of controlled substances in health care, including palliative care, veterinary care, research and other uses authorized by the law.

Needs and Benefits:

The Department of Health's most valuable means of combating drug abuse is its Official Prescription Program, which effectively monitors the prescribing and dispensing of controlled substances highly prone to diversion and trafficking. Current Part 80 regulations require pharmacies to submit specific information from the original fillings of all prescriptions dispensed for controlled substances. These regulations also require practitioners to submit information when they dispense controlled substances. Analysis of the prescription and dispensing data curtails diversion of controlled substances by detecting individuals who seek drugs because of addiction or for trafficking.

Because the existing regulations do not require pharmacies to submit information from the refilling of controlled substance prescriptions, the data may indicate that an individual has only obtained a controlled substance once, when it may have been obtained numerous times as refills. Because the current regulations also do not require pharmacies or practitioners to submit prescription or dispensing information indicating method of payment, drug-seeking individuals can obtain controlled substances or prescriptions from multiple practitioners. They do so by filling the prescriptions at different pharmacies, paying cash to evade detection by pharmacies and third party payers. Drug-seekers obtaining controlled substances directly from dispensing practitioners also avoid detection when the payment for dispensing the drugs is included in the practitioner's overall fee for the office visit.

The Department proposes amendments to Part 80 regulations to require pharmacies to submit prescription information indicating whether a controlled substance was dispensed as a new prescription or a refill. The proposed amendments will also require pharmacies and practitioners who dispense controlled substances to patients to submit information on the method of payment for the dispensed substance. These amendments will prevent diversion by allowing the Department to continue to monitor the dispensing of controlled substance prescriptions, as well as controlled substances dispensed to patients by practitioners, but with a more complete history of a drug-seeking individual's prescription and controlled substance activity.

The Department also combats drug diversion through the analysis of records and reports of licensed manufacturers and distributors to detect inappropriate procurement of controlled substances by practitioners, pharmacies and institutional dispensers. While four companies voluntarily submit reports to the Bureau of Narcotic Enforcement regarding their sales of controlled substances, more than 500 do not because it is not required by existing regulations.

Amendments to Part 80 will require all such companies to submit to the Department information from distribution of controlled substances. Such information will be reported electronically through a secure account established with the Department's Health Provider Network. These

amendments will protect the public health by enhancing the Department's monitoring capability-through the use of remote analyses comparing distribution and dispensing records-to detect and prevent controlled substance diversion by healthcare professionals who are authorized by law to purchase and possess these drugs solely for legitimate use within their scope of practice.

In the past, the Bureau has discovered diversion by monitoring and analysis of company distribution records indicating individual practitioners ordering large quantities of controlled substances. These identified practitioners have obtained controlled substances under the guise of dispensing them to their patients. However, they instead abused these substances to sustain their own addiction or trafficked in them for profit. Requiring that these records of distribution be reported electronically to the Department on a monthly basis will ensure a more efficient method of monitoring by the Bureau and result in timely identification of those practitioners who divert controlled substances to non-legitimate use. Controlled substance distribution records can be compared with controlled substance administration and dispensing records to detect unlawful activity.

While one purpose of the regulations is to prevent the diversion of controlled substances, an equally important purpose is to ensure access to controlled substances for treatment of legitimate medical conditions. The Department proposes to amend the regulations to allow practitioners who treat patients for chronic pain from conditions other than diseases the ability to issue prescriptions for greater than a thirty-day supply when such prescriptions are designated with the Code D. This flexibility in issuing prescriptions for larger quantities will aid those patients by not requiring them to obtain a new prescription from their practitioner each month, which they then must bring to their pharmacy. This amendment will ease some of the burden for these patients, who may be experiencing decreased mobility in addition to their chronic pain. By also amending the regulations to allow hospice patients up to 60 days to partial fill their controlled substance prescriptions, it will allow the patients to better adjust their changing medication needs.

Current Part 80 regulations authorize an incorporated society for the prevention of cruelty to animals and a municipal animal control facility to utilize sodium pentobarbital to euthanize animals. Such facilities and their agents also must first register with the Department and the federal Drug Enforcement Administration in order to purchase, possess, and dispense sodium pentobarbital for euthanasia.

Animal control facilities provide a valuable public service by treating stray, injured, aged, sick, and feral animals. However, current Part 80 regulations authorize such animal shelters to euthanize animals only with a schedule III formulation of sodium pentobarbital, which is not approved by the U.S. Food and Drug Administration for use with cats and smaller animals. While licensed veterinarians are authorized to euthanize with Schedule II sodium pentobarbital, they are not regularly available to perform the euthanasia in animal shelters.

Humane Societies and animal control facilities have apprised the Department that the available schedule III sodium pentobarbital formulation is recommended only for the euthanizing of dogs and larger animals. The formulation's high viscosity renders it difficult to utilize for cats and other small pets. Required use of this drug often results in seizures, fear and pain to the animals at the time of euthanasia and creates a hardship for the shelters. The facilities state that such difficulty results in less humane treatment of the animals when necessary to euthanize.

The Department is proposing amendments to Part 80 that authorize animal control facilities to utilize ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and both a schedule II and a schedule III formulation of sodium pentobarbital for euthanasia. The amendments will allow pets and animals of all sizes to be more humanely treated when these drugs are indicated for use.

COSTS:

Costs to Regulated Parties:

Pharmacies currently collect and maintain the dispensing information that the Department proposes to be additionally included with the information that is now submitted; therefore, there are only minor anticipated additional costs to pharmacies. Because practitioners are currently required to electronically submit dispensing information to the Department, there are only minor anticipated increased costs to practitioners to submit a minimal addition to that information. Practitioners and pharmacies who dispense small amounts of controlled substances submit dispensing information through the Department's Health Provider Network (HPN) by manually uploading the data into fields already provided on the HPN site. A minimal addition to those data fields should only incur a minor

increase in data submission costs. The American Society for Automation in Pharmacy (ASAP) is the nationwide software system that pharmacies and practitioners that dispense large amounts of controlled substances utilize to submit required dispensing information to the Department. The ASAP software already contains the capability to transmit the additional data fields required by the proposed regulations. Activating those additional ASAP data fields will require only minor programming costs by pharmacies and dispensing practitioners.

Manufacturers and distributors are required to maintain records of distribution. The requirement to report this information electronically to the Department may create a slight expenditure, but because manufacturers and distributors currently maintain these records in an electronic format, such expense is anticipated to be minimal to make the format compatible with the Department's system of receiving the information.

There will be no increased costs associated with the proposed amendment to allow practitioners to issue controlled substance prescriptions in quantities greater than a 30-day supply to treat patients suffering from chronic pain caused by an incurable condition or disease. No increased costs are anticipated by allowing hospice patients more time to partial fill their controlled substance prescriptions.

There may be a minimal cost to the incorporated society for the prevention of cruelty to animals, municipal animal control facility or animal shelter utilizing the additional drugs proposed for euthanasia. This cost is associated with the purchase of ketamine hydrochloride and schedule II pentobarbital for more humane euthanasia of all sizes of animals.

Costs to State and Local Government:

There will be no costs to state or local government.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

No additional paperwork is required for pharmacies, practitioners, manufacturers and distributors. Pharmacies and practitioners currently maintain the records that the Department will require to be transmitted electronically. Manufacturers and distributors are required to maintain records of distribution of controlled substances. The electronic transmission of such records will not create any additional paperwork, and may actually reduce some paperwork.

There will not be any additional paperwork associated with the proposed amendment to allow practitioners to issue controlled substance prescriptions in quantities greater than a 30-day supply to treat patients suffering from chronic pain caused by an incurable condition or disease. In fact, there may be less paperwork, as practitioners would be able to issue a controlled substance prescription every three months as opposed to monthly.

There may be a minimal increase in paperwork for pharmacies to document partially filled prescriptions for hospice patients.

Including ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and schedule II formulation of sodium pentobarbital for euthanasia may involve a minimal increase in record-keeping paperwork for animal control facilities.

Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The information the Department is seeking through these new regulations is not available from any other source.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

These regulations will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule would affect retail pharmacies that partially dispense controlled substance prescriptions for hospice patients. The rule will also affect practitioners who dispense controlled substances and prescribe them for the treatment of chronic pain. The rule will also affect licensed manufacturers and distributors of controlled substances.

According to the New York State Board of Pharmacy, there are approximately 4,500 registered pharmacies in New York State. According to the Bureau of Narcotic Enforcement, there are approximately 600 manufacturers and distributors licensed by the Department to distribute controlled substances in New York State.

Compliance Requirements:

The proposed regulations follow the intent of Article 33 of Public Health Law and will further enhance the Department's ability to curtail diversion of controlled substances.

Currently, pharmacies are required to submit the dispensing data for the original dispensing of all controlled substance prescriptions. The only new compliance requirement is the submission of the method of payment for the controlled substance prescription and whether the drug was the original dispensing or the refill dispensing of a controlled substance prescription. The only new compliance requirement for dispensing practitioners is to submit a minimal amount of additional information.

Manufacturers and distributors are required to maintain records of distribution of controlled substances. The proposed regulations will require reports based upon these records to be electronically transmitted to the Department.

Proposed regulations place compliance requirements on animal control facilities only if they choose to utilize ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and/or schedule II sodium pentobarbital for euthanasia of animals.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies and dispensing practitioners may require minor adjustments in computer software programming due to additional dispensing and prescription data submission requirements; however, this should require only minimal additional costs. The system utilized by pharmacies and practitioners already contains the additional data fields for submission of information. A slight expenditure may be necessary for activation of those fields by an Information Technology technician. Manufacturers and distributors may incur a slight expenditure due to the requirement for electronic transmission of data, but such expenditure should not create a financial hardship. There will be no compliance costs for authorizing practitioners to prescribe more than a 30-day supply of a controlled substance to treat a patient for chronic pain caused by an incurable condition or disease. Compliance costs to animal control facilities will be as a result of utilizing the proposed drugs for more humane euthanasia of animals, however, while the proposed regulations authorize the use of the additional drugs, the regulations do not require their use.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies and practitioners. The regulations will create new requirements for manufacturers and distributors but the Department expects most of these entities to currently maintain the required records of distribution in an electronic format. There are minimal technological and economic constraints anticipated for animal control facilities because the proposed rule authorizes the use of ketamine hydrochloride and schedule II pentobarbital for the euthanasia process but does not require that facilities utilize the additional drugs.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements are for the electronic transmission of records that current regulations require pharmacies, practitioners, manufacturers and distributors to maintain.

Small Business and Local Government Participation:

During the drafting of these regulations, the Department met with or solicited comment from the Pharmaceutical Society of the State of New York, the Medical Society of the State of New York, the National Association of Pharmaceutical Manufacturers, the Humane Society of the United States, the Community Hospice and the Mohawk & Hudson River Humane Society. Local governments are not affected, except for those municipalities operating animal shelters.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to pharmacies, practitioners, manufacturers and distributors located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated.

Compliance Requirements:

The only compliance requirements are for the electronic transmission of information to the Department that pharmacies, practitioners, manufacturers and distributors are required by current regulations to maintain.

Professional Services:

None necessary.

Compliance Costs:

The systems utilized by pharmacies and practitioners to submit dispensing data already contain the additional data fields. The compliance costs to activate those fields are anticipated to be minimal. The cost for an Information Technology technician to make electronic record systems of manufacturers and distributors compatible with the Department's system of receipt of controlled substance sales information is also anticipated to require minimal expenditures.

Minimizing Adverse Impact:

The regulations require only a minimal increase in reporting and record-keeping requirements.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from pharmacy, practitioner, hospice and manufacturer associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas were expressed.

Job Impact Statement

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion is curtailed through enhanced analysis of information from controlled substance prescriptions and the dispensing and distribution of controlled substances, the proposed amendments are not expected to either increase or decrease jobs overall. No overall increase or decrease in jobs is anticipated for animal control facilities utilizing the proposed additional drugs for more humane euthanasia of animals.

Office of Mental Health

NOTICE OF ADOPTION

Operation of Outpatient Programs

I.D. No. OMH-47-08-00002-A

Filing No. 101

Filing Date: 2009-01-27

Effective Date: 2009-02-11

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

Action taken: Amendment of Part 587 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 7.15 and 31.04

Subject: Operation of Outpatient Programs.

Purpose: To increase the age of individuals receiving services in day treatment programs for children.

Text or summary was published in the November 19, 2008 issue of the Register, I.D. No. OMH-47-08-00002-P.

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

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

Assessment of Public Comment

The agency received only one letter during the comment period, and it was in support of the adoption of the amendment to Part 587 of Title 14 NYCRR. The writer stated that this amendment responds to an important need in the mental health system by enabling individuals over 18 but under the age of 22 to receive services, if needed, until they are able to be graduated into a more independent living environment. The writer went on to further point out that proposed regulation has no fiscal impact and does not increase the capacity of any individual provider in the State.

NOTICE OF ADOPTION

Operation of Outpatient Programs

I.D. No. OMH-49-08-00011-A

Filing No. 102

Filing Date: 2009-01-27

Effective Date: 2009-02-11

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

Action taken: Amendment of Part 587 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 7.15, 31.04 and 43.02

Subject: Operation of Outpatient Programs.

Purpose: To correct an outdated reference.

Text or summary was published in the December 3, 2008 issue of the Register, I.D. No. OMH-49-08-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Liability for Services

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

Filing No. 103

Filing Date: 2009-01-27

Effective Date: 2009-02-15

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

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

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

Subject: Liability for Services.

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

Text or summary was published in the November 26, 2008 issue of the Register, I.D. No. MRD-48-08-00021-P.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OMRDD, 44 Holland Avenue, Albany, New York, (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 602, OMRDD has filed 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.

Assessment of Public Comment

Providers, attorneys, the public, vocational counselors, a local government and a group representing supported employment recipients commented.

Comments about supported employment (SEMP) and respite:

People will drop SEMP rather than pay or apply for Medicaid and the Waiver. They will have to liquidate assets like retirement accounts or establish supplemental needs trusts to qualify for Medicaid. Without SEMP these people will lose their jobs and will have trouble finding new employment. Providers will lose employers' trust, because providers promised employers ongoing supports for the person.

Providers need time to help people apply for Medicaid and the Waiver.

Extra work and coordination is needed to enroll SEMP recipients in Medicaid and the Waiver.

SEMP gives people jobs, dignity and independence with minimal State services. Persons receiving SEMP pay taxes.

The regulations will increase costs because persons in Medicaid and the Waiver must receive MSC and will have access to other Medicaid services.

Most people only get a small amount of State-funded respite. If families refuse to apply for Medicaid and are denied respite, persons may not be able to stay at home.

Respite should be an easy to access, readily available support, but it will be unavailable while a Medicaid application is pending. Applicants for SEMP could lose job opportunities while Medicaid and waiver applications are delayed.

OMRDD recently added SEMP and respite to the regulations.

Commenters proposed delaying the regulation for these services or exempting some or all SEMP and respite recipients from the regulation.

Response: OMRDD will amend the regulation on February 15 to delay its effective date for SEMP and respite by four months. OMRDD is still committed to obtaining Medicaid funding for as many SEMP and respite recipients as possible, and will be working with interested parties on how best to reach this goal.

Comments: Define "take all necessary steps," "full Medicaid coverage" and "liable party."

Response: OMRDD cannot define these terms. The steps necessary to obtain Medicaid will vary for each person. The type of Medicaid coverage needed depends on the service. Who is liable will vary depending on the circumstances. OMRDD will issue guidance and provide technical assistance on Medicaid coverage and liable parties.

Comment: Clarify what "OMRDD approval" for a fee waiver or reduction means.

Response: The Regional Associate Commissioner will approve waivers and reductions of fees.

Comments: The regulation will deter immigrants from OMRDD services. Immigrants are afraid to apply for benefits. OMRDD should pay for any person who unsuccessfully applied for Medicaid or whose immigration status makes him ineligible for Medicaid.

Response: Persons must take "necessary," not futile, steps to obtain Medicaid. Aliens lawfully admitted for permanent residence can qualify for Medicaid and will be expected to apply. OMRDD approval of a waiver or reduction of fees will be based on the person's ability to meet Medicaid requirements.

Comment: Aliens will have to disclose information about sponsors.

Response: OMRDD regulations cannot overrule laws establishing sponsors' liability.

Comment: Notices will be confusing and will not be translated.

Response: Notices will be as clear as possible, and will be translated if appropriate. OMRDD will establish a system for assisting providers in responding to questions about the regulation.

Comment: There will be no savings to the State, since aliens are not eligible for Medicaid.

Response: Immigrants who cannot obtain Medicaid will not have to apply. However, legal immigrants here for less than five years who already have State-funded Medicaid will more easily obtain federal Medicaid once the five year bar is over.

Comment: Provider staff should not be trusted to give information about Medicaid rules for immigrants.

Response: OMRDD will provide assistance on these issues.

Comment: OMRDD should not spend taxpayers' money on immigrants.

Response: OMRDD provides services to immigrants as required by law.

Comment: The regulation violates the requirement that OMRDD provide care to Willowbrook class members.

Response: Providers cannot deny services if required by law or court order.

Comment: Providers cannot require Willowbrook class members to apply for Medicaid.

Response: OMRDD can require that class members try to obtain Medicaid or pay for services.

Comment: The regulation should state that persons ineligible for Medicaid are entitled to State-funded services, and that providers must inform persons about these services and how to apply for them.

Response: Persons refusing to pay or apply for Medicaid or pay have no right to State-funded services from voluntary providers. Providers, not persons, apply for State funding.

Comment: If OMRDD intends to deny payment for new services unless

needed for health or safety, OMRDD should clearly announce this so the community can weigh in.

Response: OMRDD is limiting State funding for new services from voluntary providers to the circumstances set forth in section 635-12.8(a). The proposed regulations clearly announced this change and allowed public input.

Comment: There is no notice to the person of OMRDD's decision to waive payment, the provider's refusal to ask for payment or factual determinations such as whether the person took all necessary steps to obtain Medicaid. A person cannot challenge these decisions.

Response: Notice and hearings are not required. If experience shows there is a practical need for formal notice and review, OMRDD will add such requirements.

Comments: There are no guidelines for OMRDD's decisions on fee waivers. OMRDD's decisions on fee waivers or reductions should be consistent.

Response: These decisions will be based on the factors in sections 635-12.3(d) and 635-12.4(d).

Comment: The regulation violates Mental Hygiene Law's provisions that persons cannot be denied services because of inability to pay.

Response: Mental Hygiene Law section 41.25 allows providers to deny services for refusal to pay.

Comment: Providers will threaten to reduce or stop services if families do not cooperate.

Response: Preexisting services may not be discontinued because of a failure to pay.

Comment: Providers denying or stopping services should refer the person to another provider.

Response: OMRDD will not require a provider to refer a person not yet receiving services elsewhere. If a provider accepts a person and then discontinues services, it must follow OMRDD regulations at section 633.12 allowing appeals of proposed discharges.

Comment: OMRDD should set a timeline for determining when to deny or discontinue services.

Response: Unless prohibited by law or court order, a provider can deny new services as long as the person is refusing to pay or apply for Medicaid. A provider cannot discontinue services without following section 633.12 of OMRDD regulations.

Comment: There is no authority for the regulations. Mental Hygiene Law section 43.03 only establishes liability for services.

Response: Mental Hygiene Law sections 43.03, 41.25 (requiring providers to establish fee schedules pursuant to OMRDD regulations and to charge fees), 13.07, 13.09 and 43.02 authorize these regulations.

Comment: The policy changes the regulations reflect should be made through statute.

Response: The Mental Hygiene Law already requires payment for services and allows providers to deny services because of refusal to pay.

Comments: Regulations are not needed for 2% of OMRDD's population. A more narrow regulation or policy would suffice.

Response: The regulation affects all current and future service recipients. It contains procedures, obligations and rights of providers, individuals and liable parties. Providers requested this regulation.

Comment: The regulation creates unnecessary and costly government oversight.

Response: This regulation will result in net savings by replacing 100% State payments with Medicaid payments.

Comment: The regulation makes providers gatekeepers for services, gives providers incentives to reject people, and sanctions people for what providers see as lack of cooperation.

Response: The regulation does not make providers gatekeepers. It governs how providers charge for services and how people must pay for services, both of which are authorized under current law.

Comment: It will be uncomfortable to have providers collect information, give families fee schedules, bill and assign claims to OMRDD. Families and consumers who are billed while applying for Medicaid will be confused. Families may not want to share information with agency staff they have just met. Providers may feel pressure to reduce or waive fees rather than damage relationships with individuals and individuals may opt out of services.

Response: The notices will explain that persons with Medicaid do not need to pay for services. Providers will designate people who can collect information from families. Many providers already collect information from individuals and families.

Comment: Providers will ask non-labile parties for information and payment guarantees. Provider staff should not decide who is legally liable. There should be sanctions against providers who seek guarantees of payment from non-labile parties.

Response: OMRDD will provide guidance on who is liable. OMRDD may consider remedies if providers attempt to collect payment from non-labile persons.

Comment: Providers should tell non-labile persons they are not personally liable and do not have to supply information not in their possession.

Response: OMRDD will provide guidance on liable parties so that notices only go to liable parties. A person may have to obtain information from other sources in order to qualify for Medicaid.

Comments: Define "reasonable collection efforts." How long do providers have to collect? Phone calls or letters could be harassment. The regulation allows aggressive and abusive collection practices.

Response: What is reasonable will vary based on the circumstances. The intent is that providers make reasonable efforts to collect bills, but without harassment or threats, which are already legally prohibited.

Comment: There should be funding while providers are waiting for people to pay bills.

Response: OMRDD funding will continue for existing services. Providers do not have to begin services without Medicaid funding or reasonable assurances of private payment.

Comments: "Immediate need" should be replaced with a list of emergency situations, Regional Associate Commissioner approval, and 9 - 12 months of funding while the person obtains Medicaid. OMRDD should waive all fees for three months while a person applies for Medicaid.

Response: "Immediate need" means that a person's health or safety will be endangered without services. Funding continues for preexisting services. Requiring State funding for new services for persons not yet on Medicaid would undermine the purpose of the regulation.

Comment: The regulation should say OMRDD will, not may, pay when the provider is legally prohibited from denying person services.

Response: "May" conveys that all the conditions listed in the regulation must be met and that State funds must be available.

Comments: Providers should waive or reduce fees based on a sliding scale published by OMRDD and modeled after established sliding scales.

Response: Fee reductions and waivers will depend on individual circumstances. If experience shows that standard sliding scales are needed in all cases, OMRDD will require them.

Comment: OMRDD approval for reduced or waived fees could cause delays.

Response: Providers can waive or reduce fees without OMRDD approval if they are not requesting State payments.

Comment: The summary says fees must equal the Medicaid fee or price, but the regulation does not allow OMRDD to set an alternate price.

Response: The summary says this because rates for some OMRDD services are called "prices." No alternate fees are contemplated.

Comment: OMRDD should pay the lower of customary fees or the Medicaid rate. The regulation prevents families from paying more for specialized services. OMRDD should trust that providers will not overcharge families and consumers for specialized services.

Response: The regulation limits the fees that can be charged for the services covered by the regulation. Charging more for "specialized" services is beyond the scope of this regulation, but OMRDD would scrutinize such arrangements carefully for abuse, overreaching and discrimination.

Comment: Some districts do not approve Medicaid applications quickly. There should be a waiver of fees when it takes a long time to get a Medicaid application approved.

Response: OMRDD cannot control Social Services districts. Payment for preexisting services continues while a Medicaid application is pending. It is in everyone's best interests to qualify a person for Medicaid as quickly as possible.

Comment: Persons requesting new services should have to enroll in the Waiver, not just take all necessary steps to enroll.

Response: Taking all necessary steps to enroll in the Waiver means that the person will have to complete enrollment wherever possible.

Comment: Providers should have to provide legal assistance to families.

Response: OMRDD providers do not provide legal services and OMRDD does not regulate legal services.

Comment: Providers should only have to give preexisting services notices to persons without payment waivers.

Response: Providers must give notice to all persons so they are aware of their obligation to maintain Medicaid eligibility or to pay for services.

Comment: The requirement to spend down should mean being eligible on a medically needy basis, not impoverishing oneself.

Response: This requirement means that the person has to spend down to qualify for Medicaid as medically needy.

Comment: Fees are not adequate for vocational providers that do not offer case management.

Response: This regulation does not establish methodologies for setting Medicaid fees for SEMP and payment rates for other vocational services.

Comment: Providers will need guidance on how to protect the privacy of personal and financial information.

Response: Providers are already familiar with how to protect information because they are required to protect the privacy of clinical information.

Comment: Three months of MSC does not help if the provider does not offer MSC.

Response: Every person receiving Waiver services must have service coordination, although it may not be from the same provider giving the person other services.

Power Authority of the State of New York

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-06-09-00001-P

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

Proposed Action: Increase in hydroelectric preference power rates.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Public hearing(s) will be held at: 11:00 a.m., March 19, 2009 at 30 S. Pearl St., Videoconference Rm. - 10th Fl., Albany, NY.

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

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

Substance of proposed rule: Pursuant to the New York Public Authorities Law, Section 1005, the Power Authority of the State of New York (the "Authority") proposes to increase its rates for hydroelectric preference power supplied by the Niagara and St. Lawrence-FDR hydroelectric projects, effective May 1, 2009. Preference power is sold primarily to municipal and rural electric cooperative customers, the neighboring state customers and the upstate utilities for resale to their residential customers.

The Authority proposal would increase rates for a typical preference power customer by 8.2% in the first year (May 1, 2009 to April 30, 2010) and by 3.9% in the second year (May 1, 2010 to April 30, 2011).

Written comments on the proposed increase will be accepted through Monday, March 30, 2009, at the address below. For further information, contact:

POWER AUTHORITY OF THE STATE OF NEW YORK

Anne B. Cahill, Corporate Secretary

123 Main Street, 15M

White Plains, New York 10601

(914) 390-8036

(914) 681-6949 (fax)

secretarys.office@nypa.gov

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

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

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

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

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

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

Rates for the Sale of Power and Energy

I.D. No. PAS-06-09-00002-P

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

Proposed Action: Update the service tariffs (ST-38A, ST-38B, and ST-39A) applicable to the Power Authority's Municipal and Rural Electric Cooperative system customers.

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

Subject: Rates for the sale of power and energy.

Purpose: Update Municipal/Rural Electric Cooperative systems' service tariffs to streamline them/include additional required information.

Substance of proposed rule: Pursuant to the New York Public Authorities Law, Section 1005(13) and Chapter 32 of the Laws of New York of 1987, the Power Authority of the State of New York (the "Authority") proposes to amend the Authority's current production service tariffs applicable to its Municipal and Rural Electric Cooperative system customers.

The Authority proposes to reformat the service tariffs for easier reading and improved organization, incorporate into one set of documents provisions that were adopted at different times, include certain standard provisions now applicable to all of the Authority's service tariffs and add abbreviations and terms.

Written comments on the proposed tariffs will be accepted through Monday, April 13, 2009, at the address below. For further information, contact:

POWER AUTHORITY OF THE STATE OF NEW YORK

Anne B. Cahill, Corporate Secretary

123 Main Street, 15M

White Plains, New York 10601

(914) 390-8036

(914) 681-6949 (fax)

secretarys.office@nypa.gov

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

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

Public comment will be received until: April 13, 2009.

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.

Public Service Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-03-09-00013-P, pertaining to Review Utility Tariff, Operating, and Infrastructure Changes to Reduce Electric Losses on Electric Delivery Systems (08-E-0751SA4), published in the January 21, 2009 issue of the *State Register* contained the incorrect substance. Following is the correct substance:

Substance of Proposed Rule: The Commission is considering a report and tariff revisions filed by Orange and Rockland (O&R) in compliance with Commission Orders in Case 08-E-0751 issued June 23 and July 17, 2008. The report identifies major sources of losses on O&R's transmission and distribution system and identifies potential measures

and programs to mitigate those losses. The report also sets forth the basis for the development of an O&R VARs (volt-ampere reactive) Improvement Program. In compliance with these Commission Orders, O&R also filed tariff amendments to adjust the rates of certain service classifications. The Commission may approve, reject or modify, in whole or in part, O&R's proposed tariff and requests.

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

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

Filing Date: 2009-01-23

Effective Date: 2009-01-23

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

Action taken: On January 15, 2009, the PSC adopted an order approving the petition of Uniquet Development, to submeter electricity at 200 Delaware Avenue, Buffalo, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Uniquet Development, to submeter electricity at 200 Delaware Avenue, Buffalo, New York.

Substance of final rule: The Commission, on January 15, 2009, adopted an order approving a petition by Uniquet Development, to submeter electricity at 200 Delaware Avenue, Buffalo, New York, located in the territory of Niagara Mohawk Power Corporation.

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-E-0871SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-40-08-00012-A

Filing Date: 2009-01-23

Effective Date: 2009-01-23

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

Action taken: On January 15, 2009, the PSC adopted an order approving the petition of East Coast 5 LLC, to submeter electricity at 46-30 Center Boulevard, Long Island City, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of East Coast 5 LLC, to submeter electricity at 46-30 Center Boulevard, Long Island City, New York.

Substance of final rule: The Commission, on January 15, 2009, adopted an order approving a petition by East Coast 5 LLC, to submeter electricity at 46-30 Center Boulevard, Long Island City, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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-E-1073SA1)

NOTICE OF ADOPTION**National Grid's 2009 Economic Development Plan****I.D. No.** PSC-44-08-00011-A**Filing Date:** 2009-01-23**Effective Date:** 2009-01-23

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

Action taken: On 1/15/09, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) August 29, 2008 filing for an \$8 million Economic Development Plan for 2009.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: National Grid's 2009 Economic Development Plan.

Purpose: To approve National Grid's 2009 Economic Development Plan.

Substance of final rule: The Commission, on January 15, 2009, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan for 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.

(01-M-0075SA43)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Intercarrier Agreement to Interconnect Telephone Networks for the Provisioning of Local Exchange Service****I.D. No.** PSC-06-09-00004-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and XO Communications Services, Inc. to revise the interconnection agreement effective on June 17, 2007.

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

Subject: Intercarrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and XO Communications interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and XO Communications Services, Inc. in June 2007. The companies subsequently have jointly filed amendments to clarify exchange of Voice over Internet Protocol (VoIP) traffic. The Commission is considering these changes.

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.

(03-C-1234SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Mini Rate Filing****I.D. No.** PSC-06-09-00005-P

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

Proposed Action: The Commission is considering a proposed filing by Village of Holley 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: Mini Rate Filing.

Purpose: To increase annual electric revenues by approximately \$246,431 or 31.9%.

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 Holley to increase its annual electric revenues by approximately \$246,431 or 31.9%. The proposed filing has an effective date of June 1, 2009. The Commission may approve, reject or modify, in whole or in part, Village of Holley's request.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0053SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Iberdrola's Adoption of a Code of Conduct and Standards Pertaining to Affiliates and the Provision of Information****I.D. No.** PSC-06-09-00006-P

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

Proposed Action: The Public Service Commission is considering whether to accept the Joint Proposal containing the proposed Code of Conduct for Iberdrola, S.A. that the Commission required as part of the conditions on Iberdrola's recent acquisition of Energy East Corp.

Statutory authority: Public Service Law, sections 2, 5, 70, 110

Subject: Iberdrola's adoption of a Code of Conduct and Standards Pertaining to Affiliates and the Provision of Information.

Purpose: To satisfy merger conditions placed on Iberdrola, S.A. as part of Iberdrola's recent acquisition of Energy East Corporation.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part a code of conduct and standards Pertaining to Affiliates and the Provision of Information proposed by Iberdrola, S.A. Iberdrola proposed the Code of Conduct to satisfy a Public Service Commission order. The Commission had directed Iberdrola, and interested parties, to submit the Code of Conduct as a condition on the Commission's approval of Iberdrola acquisition of Energy East Corporation. Iberdrola then submitted the Code of Conduct via a Joint Proposal dated December 8, 2008. The Joint Proposal addresses all issues relating to affiliate transactions raised in the merger proceeding, 07-M-0906.

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-0906SA3)

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

Interconnection of the Networks between Frontier Comm. and WVT Communications for Local Exchange Service and Exchange Access

I.D. No. PSC-06-09-00007-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Frontier Comm. of NY and Frontier Comm. of Sylvan Lake for approval of an Interconnection Agreement with WVT Communications executed on November 17, 2008.

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

Subject: Interconnection of the networks between Frontier Comm. and WVT Communications for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Frontier Comm. and WVT Comm.

Substance of proposed rule: Frontier Communications of New York, Inc. and Frontier Communications of Sylvan Lake, Inc. with WVT Communications have reached a negotiated agreement whereby Frontier Communications of New York, Inc. and Frontier Communications of Sylvan Lake, Inc. with WVT Communications will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their network lasting until November 17, 2010, or as extended.

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-C-0028SA1)

State University of New York

NOTICE OF ADOPTION

State University of New York Tuition Refund Policy

I.D. No. SUN-45-08-00017-A

Filing No. 104

Filing Date: 2009-01-27

Effective Date: 2009-02-11

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

Action taken: Amendment of section 302.2(b) of Title 8 NYCRR.

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

Subject: State University of New York Tuition Refund Policy.

Purpose: Limit time period for tuition refunds based on hardship to one year following the term for which the tuition is due.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. SUN-45-08-00017-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 Ellermann, 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.Ellermann@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

NOTICE OF ADOPTION

Suspension and Resumption of Benefits

I.D. No. WCB-49-08-00010-A

Filing No. 99

Filing Date: 2009-01-27

Effective Date: 2009-02-11

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

Action taken: Amendment of section 300.23 and addition of section 300.35 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 10(4), 15(3)(w) and 117

Subject: Suspension and resumption of benefits.

Purpose: To set forth the requirements for the suspension and resumption of benefits of incarcerated felons.

Text of final rule: Section 300.23 of Title 12 NYCRR is hereby amended to read as follows:

(a) In any case where the carrier or employer has made payment without waiting for an award by the board, the filing of a form C-8/8.6 with the chair[man] by a carrier or an employer is not authority to suspend or reduce payments of compensation [for temporary or permanent disability in an open and pending claim] unless there accompanies it supporting evidence that the suspension or reduction of payment is in order, such as:

(1) a copy of the payroll report if the compensation rate is not based on information contained in the C-2 and is below the maximum;

(2) medical or other reports (including notice of return to work) justifying the suspension or reduction of payments, or by indicating on such notice the name and date of the medical or other reports, if they have been previously filed[.]; or

(3) proof of incarceration upon conviction of a felony, which allows for the suspension of both wage replacement benefits and payment for causally related medical treatment.

(b) In [an] any [open] case where [an award has been made for temporary or permanent disability] the board has made an award of compensation for a temporary total or temporary partial disability at an

established rate of compensation, and there is a direction for continuation of payments, the employer or carrier shall continue payments at such rate [beyond the period covered by the award], and such payments shall not be suspended or reduced until:

(1) there is filed with the [chairman] *chair* in the district office where the case is [pending] *assigned*, a notice of intention to suspend or reduce on a prescribed form accompanied by supporting evidence justifying such suspension or reduction together with proof of mailing of copies thereof upon the claimant, his/her doctor and his/her representative, and,

(2) the [chairman] *chair*, upon receipt of above, has scheduled a hearing or meeting or conference on the issue within 20 days during any period when regular hearings or meetings or conferences are scheduled, and there is a [determination by the referee and] finding that such suspension or reduction is justified. At said hearing or meeting or conference, if either party fails to appear or fails to submit any evidence as to the above issue, the [Workers' Compensation Law judge] *board* shall take such action as [he or she deems proper] *is appropriate* under the circumstances including continuation, suspension or reduction of the award. Cases at hearing points which do not have regularly scheduled hearings or meetings or conferences within the 20 days, may be scheduled at another available hearing point.

(3) Notwithstanding any provision to the contrary in this subdivision, the employer or carrier upon the filing of a form C-8/8.6 may suspend or reduce such payments:

(i) where a notice of return to work (form C-11), or other written substantial legal evidence of claimant's return to work, has been filed with the [chairman] *chair*, or

(ii) where the supporting evidence submitted therewith includes payroll records for at least two calendar weeks which warrant such suspension or reduction, or

(iii) where the claimant's medical evidence indicates that the claimant has no disability[.] or

(iv) where supporting evidence submitted therewith includes proof of incarceration upon conviction of a felony.

(c) (1) In any [closed] case where the board has made an award for compensation [has been made] for permanent total or permanent partial disability, payments shall not be suspended or modified until an application on a prescribed form[,] accompanied by supporting evidence, is made [to reopen the claim] *to reconsider the degree of impairment or wage-earning capacity together with proof of mailing of copies thereof upon the claimant, his/her doctor and his/her representative* and [there has been] *the board has made* a final determination of such application [by the board], finding that such suspension or modification is justified; provided, however, that if such supporting evidence includes [payrolls] *payroll records* which show earnings for at least eight weeks immediately prior to the date of the application which warrant modification of the rate fixed and evidence identifying the claimant as the person whose [payrolls] *payroll records* are being submitted, the employer or carrier shall continue to pay compensation at such modified rate as the evidence submitted indicates is proper, or may suspend payments if the evidence submitted supports such suspension, pending final determination of the application by the board.

(2) Notwithstanding any provision to the contrary in this subdivision, the employer or carrier may stop, suspend or reduce such payments:

(i) where supporting evidence includes proof of incarceration upon conviction of a felony, or

(ii) where compensation payable for permanent partial disability has reached the maximum benefit weeks allowed pursuant to Workers' Compensation Law Section 15(3)(w).

In either of the above circumstances, the employer or carrier must file form C-8/8.6 with the board within sixteen days of stopping such payments in accordance with Workers' Compensation Law Section 25(1)(d).

(3) Payment of death benefits shall not be suspended unless an application on a prescribed form [to reopen the claim] is made, accompanied by supporting evidence, and the board approves such suspension.

(d) Whenever an employer or carrier shall terminate medical care or refuse authorization for special medical services, prescribed form C-8.1Part A, [Notice of Termination of Care or Refusal of Authorization] *Notice of Treatment Issues(s)/Disputed Bill Issue(s)*, shall be completed and filed with the [chairman] *chair* within five days after such termination or refusal, together with:

(1) medical report by authorized physician that need for medical care has ended;

(2) copy of notice to claimant's physician to discontinue medical care, or to refrain from commencing medical care, together with report of authorized physician establishing basis of discontinuance or refusal; and

(3) proof of mailing notice under paragraph (2) of this subdivision to the claimant and his physician.

(e) In any case in which a penalty has been imposed arising out of the failure to make payment of compensation according to the terms of the

award within 10 days thereafter, the employer or his insurance carrier must file notice with the [chairman] *chair*, on board form C-8/8.6, of the payment of such penalty within 10 days after the imposition thereof.

Section 300.35 is added to 12 NYCRR to read as follows:

300.35 Resumption of Benefits upon release from custody

All those whose benefits have ceased by operation of Workers' Compensation Law section 10(4) may apply to the board for resumption of benefits upon their release from custody, by providing notice to the board of release from custody on a request for further action, Form RFA-1, and accompanied by the following information:

(a) *proof of release from custody, and*

(b) *up to date medical evidence where the claimant has not, as of the date of conviction, been classified as permanently partially disabled.*

Final rule as compared with last published rule: Nonsubstantial changes were made in section 300.23(b)(2).

Text of rule and any required statements and analyses may be obtained from: Cheryl M. Wood, New York State Workers' Compensation Board, 20 Park Street, Room 400, Albany, New York 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

Revised Regulatory Impact Statements

1. Statutory Authority:

The Workers' Compensation Board (Board) is authorized to amend 12 NYCRR § 300.23, and add 12 NYCRR § 300.35. Workers' Compensation Law (WCL) § 117(1) authorizes the Board to adopt reasonable rules and regulations consistent with and supplemental to, the provisions of the WCL and Labor Law. WCL § 10(4) provides that any person incarcerated upon conviction of a felony shall be deemed ineligible for all benefits provided under this chapter. All those whose benefits have ceased by operation of this section may apply to the Board for benefits upon their release from custody pursuant to regulation of the Board. WCL § 15(3)(w) provides a limit to the number of weeks permanent partial disability benefits are payable based upon the claimant's degree of impairment where the date of accident or disability is on or after March 13, 2007.

2. Legislative Objective:

Chapter 6, § 37 of the Laws of 2007, added a new subdivision 4 to section 10 of the WCL to deem ineligible for all benefits under the WCL those persons incarcerated upon conviction of a felony. The law further provides that upon release from custody, these individuals may apply to the Board for reinstatement of their benefits pursuant to regulation of the Board. The provision codified existing case law, except that it allows carriers and self-insured employers to suspend causally related medical treatment in addition to wage replacement benefits. Section 4 of Chapter 6 amended WCL § 15(3)(w) to create a schedule of maximum number of weeks that a claimant classified with a permanent partial disability, with a date of accident or date of disability on or after March 13, 2007, may receive indemnity benefits. The maximum number of weeks range from 225 weeks where the loss of wage-earning capacity is 15 percent or less, to 525 weeks where the loss of wage-earning capacity is greater than 95 percent.

3. Needs and Benefits:

Section 300.23 governs the requirements to suspend or reduce compensation benefits. The proposal amends several portions of § 300.23. There are five categories of changes: 1) amendments necessary to achieve compliance with the statutory changes made by the 2007 workers' compensation reform legislation; 2) amendments so the regulation reflects current Board practice; 3) structural amendments; 4) amendments that change the wording of a provision for clarity; and 5) amendments that make the rule gender neutral.

Reform Changes:

The 2007 reform legislation codified case law that claimants who are incarcerated after conviction for a felony are no longer entitled to indemnity benefits. In addition, the reform legislation eliminated the entitlement to medical benefits. The 2007 reform legislation also amended the WCL to cap the number of weeks that claimants classified with permanent partial disabilities may receive indemnity benefits. After the completion of the number of weeks set in WCL § 15(3)(w), the claimant is no longer entitled to indemnity benefits. Section 300.23 has been amended in several places to reflect the ability of the carrier to suspend or reduce compensation benefits where there is proof of incarceration upon conviction of a crime. Subsection

(c) of section 300.23 has been amended by adding a new subparagraph (ii) to allow carriers to suspend payments for permanent partial disability when payments have reached the maximum number of benefit weeks under WCL § 15(3)(w). These amendments provide uniform procedures on how insurance carriers must proceed to stop paying benefits pursuant to the new provisions.

Practice Changes:

The Board no longer refers to compensation cases as being open or closed. Cases are pending or they are marked no further action. 12 NYCRR § 300.23 is being amended in several places to delete the words open, closed and reopen. Section 300.23(b) is being amended to delete the word open and to make clear that the subsection applies to any case where temporary disability awards have been made. Section 300.23(c) is amended to delete the word closed and to clarify that the subsection applies to awards for permanent disability. These changes align the regulation with current practices.

The Board decides issues in compensation cases in several other ways besides holding hearings. Issues related to settlement agreements under WCL § 32 are handled at meetings, and conferences are held in an attempt to settle issues prior to scheduling a hearing. Section 300.23(b) (2) is being amended to reflect that the Board conducts business via the use of meetings and conferences in addition to hearings. Again, these changes align the regulation with actual practice.

Issues in compensation claims in certain circumstances are decided by conciliators as well as referees. The phrase “Workers’ Compensation Law judge” in § 300.23(b) (2) is being replaced with the word Board so as not to limit the type of employee involved in resolving compensation claims. This change allows the Board to make full use of the statutorily provided tools to resolve cases.

Structural Changes:

Section 300.23 is a lengthy rule that addresses a variety of situations pertaining to suspending or reducing benefits. Several changes have been proposed to help make the rule easier to navigate. The first un-numbered paragraph in § 300.23(b) has been numbered as paragraph (3), and lists the situations where temporary disability payments may be suspended by a carrier without a hearing. A paragraph has been added to § 300.23(c) to delineate the situations where a carrier can suspend permanent disability payments without a hearing. These changes will improve the readability of the regulation.

Clarity:

Some of the wording in § 300.23 is cumbersome. Words have been changed or rearranged to make the rule easier to read and understand. These changes can be found at § 300.23(b), § 300.23(b) (1) and (2), and § 300.23(c). These changes will also improve the readability of the regulation so it is easily understood.

Gender Neutral Changes:

Section 300.23 has been amended in several places to replace chairman with chair and to replace his with his/her.

Section 300.35 is added by this proposal to 12 NYCRR to provide direction to a claimant recently released from custody on how to reapply for benefits. The issuance of such regulation is required by the recently enacted WCL § 10(4). The addition of 12 NYCRR § 300.35 will benefit claimants released from custody by providing a process for reapplying for benefits.

This regulation provides needed direction to parties and practitioners regarding the action they may or must take when suspending or reducing benefits or seeking the resumption of benefits. By following this regulation, parties and practitioners will respond properly when a claimant is incarcerated for a felony or he/she reaches the maximum number of weeks to receive benefits.

4. Costs:

The Board estimates there will be little or no additional costs as a result of the amendments of § 300.23 and the addition of § 300.35. While the Board will have to scan the notice of release from custody and the accompanying information into the electronic case folder, the number of documents will be small as only a small number of claimants have their benefits suspended due to incarceration for a felony.

Costs may be reduced for carriers and self-insured employers

because there will be clear direction on the actions carriers must take when a claimant is incarcerated after conviction. Further it is now clear that carriers and self-insured employers are no longer responsible for causally related medical expenses while claimants are incarcerated upon conviction of a felony.

New § 300.35 instructs claimants on how to reapply for benefits following their release from custody. The addition will not result in any added or reduced costs for the parties. The carriers’ and self insured employers’ resumption of benefits is not an added cost but a payment of causally related benefits under the WCL.

5. Local Government Mandates:

There are approximately 2300 local governments that are self-insured for workers’ compensation purposes. The proposed amendments to § 300.23 and proposed addition of § 300.35 do not impose any additional responsibilities or duties on local governments. Section 300.23 relieves local governments from having to pay for causally related medical treatment while the claimant is incarcerated upon conviction of a felony. Section 300.35 provides a process for claimants released from custody to reapply for benefits. The resumption of benefits after release from custody provided adequate proof is supplied, is not an additional responsibility for local governments but rather is already required under the WCL.

6. Paperwork:

The amendments to § 300.23 will require the carrier or self-insured employer to file an application or a C-8/8.6 to suspend benefits together with proof of the claimant’s incarceration upon conviction of a felony. The carrier or self-insured employer will also have to file a C-8/8.6 to suspend payments based when the cap on permanent partial disability benefits is reached. This provision reiterates the requirement in WCL § 25(1) (d) that carriers and self-insured employers must provide notice to the Board that the payment of compensation has ceased upon a form prescribed by the Chair.

In order to resume benefits, § 300.35 will require a claimant released from custody to file a form prescribed by the Board together with proof of release from custody, and up to date medical evidence where the claimant has not, as of the date of conviction, been classified with a permanently partially disability. However this is the current practice so this provision merely codifies existing law and practice.

7. Duplication:

This rule does not duplicate any existing state or federal rules. This merely sets forth the process to implement amendments to WCL § 10(4) and § 15(3) (w).

8. Alternatives:

The alternative to amending § 300.23 and creating § 300.35 would be to do nothing and rely on the newly enacted WCL § 10(4), and the newly amended WCL § 15(3) (w). This course of action is unsatisfactory because the statutes do not outline a procedure as to how a carrier or self-insured employer should suspend benefits, and § 10(4) specifically requires the Board to issue regulations on the process for reinstatement of benefits following incarceration. The requirements relative to suspension of compensation benefits are contained in 12 NYCRR § 300.23, which is the proper place to include the procedure for how a carrier or self-insured employer can suspend benefits for a claimant incarcerated upon conviction of a felony or for a claimant who has received the permanent partial disability payments for the maximum number of weeks. WCL § 10(4) provides that claimants whose benefits have ceased by operation of that provision may apply to the Board for benefits pursuant to a regulation of the Board, thereby clearly contemplates rulemaking by the Board and making the addition of § 300.35 mandatory. The Board seeks to implement the simplest process for the resumption of benefits for those whose benefits ceased pursuant to § 10(4).

9. Federal Standards:

There are no federal standards applicable.

10. Compliance Schedule:

Affected parties will be able to achieve compliance with the rule upon adoption.

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

A Revised Regulatory Flexibility Analysis for Small Business and Local Governments, Revised Rural Area Flexibility Analysis and Revised Statement in Lieu of Job Impact Statement are not required for the non-substantial changes to 12 NYCRR Section 300.23(b)(2). The proposed rule amended § 300.23(b) (2) to, among other things, remove the word “referee” and replace it with the word “board.” However, in a consensus rule making in 2008, the word “referee” had been deleted and replaced with “Workers’ Compensation Law judge.” Therefore, the provision now reads, “[a]t said hearing, if either party fails to appear or fails to submit any evidence as to the above issue, the Workers’ Compensation Law judge shall take such action as he or she deems proper under the circumstances including continuation, suspension or reduction of the award.” The proposed rule made the following changes to this provision, “[a]t said hearing or meeting or conference, if either party fails to appear or fails to submit any evidence as to the above issue, the [referee] board shall take such action as [he deems proper] is appropriate under the circumstances including continuation, suspension or reduction of the award.” The first part of the non-substantive change replaces the word “referee,” which was to be deleted, with “Workers’ Compensation Law judge.” A Workers’ Compensation Law judge and a referee are the same. The Board no longer uses the old title of referee but uses the title of Workers’ Compensation Law judge. Therefore, there is no substantive change. The second part of the non-substantive change is to add the words “or she” to those that will be deleted. As this just removes words added to make the rule gender neutral, it is a non-substantive change. The text that will be adopted will now read, “[a]t said hearing or meeting or conference, if either party fails to appear or fails to submit any evidence as to the above issue, the [Workers’ Compensation Law judge] board shall take such action as [he or she deems proper] is appropriate under the circumstances including continuation, suspension or reduction of the award.” These changes do not change the meaning or intent of the provision.

These non-substantive changes are not discussed in the Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis and Statement in lieu of Job Impact Statement. The documents do not specifically discuss the change from “referee” to “Board.” As this change is not discussed, there is no need to revise the documents.

Assessment of Public Comment

The agency received no public comment.