

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.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Administration of “Other Approved Agents” Such As Buprenorphine to Treat Opioid Addictions

I.D. No. ASA-49-08-00007-E

Filing No. 1319

Filing Date: 2008-12-17

Effective Date: 2009-01-05

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

Action taken: Amendment of Part 828 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(b), (e), 19.21(b), 19.40, 32.01, 32.05(b), 32.07(a), (b)

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

Specific reasons underlying the finding of necessity: The proper administration and availability of buprenorphine and other approved agents to treat opioid addiction is necessary to ensure that those persons suffering from addiction can get the most advanced and most appropriate treatment for their disease.

Subject: Administration of “other approved agents” such as buprenorphine to treat opioid addictions.

Purpose: To ensure that all persons will have equal access to the appropriate “approved agent” to treat their opioid addiction.

Text of emergency rule: § 828.1 Definitions.

(a) Methadone program means a substance abuse program using methadone or other approved agents, and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(1) Methadone maintenance means a treatment procedure using methadone or any of its derivatives, or other approved agents, administered over a period of time to relieve withdrawal symptoms, reduce craving and permit normal functioning so that, in combination with rehabilitative services, patients can develop productive life styles.

(i) Methadone to abstinence means a treatment procedure using methadone, or other approved agents, administered for a period exceeding 21 days, as part of a planned course of treatment involving reduction in dosage to the point of abstinence followed by drug-free treatment.

(ii) Methadone maintenance aftercare means a planned course of treatment for methadone, or other approved agents maintenance patients, directed toward the achievement of abstinence and, through the aid of supportive counseling, the continuance of a drug-free life style.

(2) Methadone detoxification means a treatment procedure using methadone, or any of its derivatives, or other approved agents, administered in decreasing doses over a limited period of time for the purpose of detoxification from opiates.

(b) Methadone clinic means a single location at which a methadone program provides methadone, or other approved agent and rehabilitative services to patients.

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. ASA-49-08-00007-P, Issue of December 3, 2008. The emergency rule will expire February 14, 2009.

Text of rule and any required statements and analyses may be obtained from: Deborah Egel, Senior Attorney, OASAS, 1450 Western Avenue, Albany, New York 12203, (518) 485-2312, email: DeborahEgel@oasas.state.ny.us

Regulatory Impact Statement

The proposed emergency revision to Part 828 – Requirements for the operation of chemotherapy substance abuse programs will revise methadone regulations that have existed for 24 years without change. The amendment to the definitions of Part 828 are being adopted by emergency because the need to allow alternative chemotherapy options to methadone clinics is in the interest of the public health, safety and welfare.

Opioid addiction is a chronic illness which can be treated effectively with medications that are administered under conditions consistent with their pharmacological efficacy, and when treatment includes necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, medical services and, when appropriate, vocational rehabilitation. Medication assisted treatment can be effective in facilitating recovery from opioid addiction for many patients. The proposed regulation sets forth standards to guide opioid addiction treatment.

1. Statutory Authority:

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (“the Commissioner”) to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 19.21 (b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to evaluate chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32.

Section 32.05 of the Mental Hygiene Law requires providers to obtain an operating certificate issued by the Commissioner in order to operate chemical dependence services including but not limited to methadone.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner the power to adopt regulations to effectuate the provisions and purposes of Article 32.

Section 32.09(b) of the Mental Hygiene Law gives the Commissioner the power to withhold an operating certificate for a Methadone provider until statutory requirements are satisfied.

The relevant sections of the Mental Hygiene Law cited above, allow the Commissioner to regulate how chemical dependency services are administered. This regulation will alter the way those services are administered, providing greater flexibility within the State regulations in alignment with Federal rules promulgated by SAMHSA in 2003. The objective is in line with the legislative intent behind the enactment of Sections 19, 22 and 32 of the Mental Hygiene Law, allowing the Commissioner to certify, inspect, license and establish treatment standards for all facilities that treat chemical dependency. Revising policy and procedures with regard to opioid treatment, will establish a standard for all facilities, which is in the best interest of the patient, and will assist opioid treatment programs to provide better health care services and recovery from opioid addiction.

2. Legislative Objectives:

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the State to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The legislature enacted Section 19, enabling the Commissioner to establish best practices for treating chemical dependency.

3. Needs and Benefits:

Research supports that opioid addiction is a chronic illness that can be treated effectively with medications when administered under conditions consistent with their pharmacological efficacy and when treatment includes necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, medical services and when appropriate vocational rehabilitation (CSAT, 2001). Medication assisted treatment can be effective in facilitating recovery from opioid addiction for many patients.

Approximately 40,000 patients, who represent 36% of patients currently being served in addiction treatment, are in opioid treatment programs in New York State. OASAS Part 828 regulations were written more than 24 years ago and have not been revised despite the fact that SAMHSA promulgated an amendment to the rules in 2003 that allowed opioid treatment programs to offer Buprenorphine treatment along with methadone. The proposed emergency regulation would allow chemotherapy programs to provide Buprenorphine for the maintenance or detoxification treatment of dependence on opioids such as heroin or prescription pain relievers. Consistency between Federal and State regulations is a benefit to providers.

In addition, New York State law currently allows Buprenorphine to be administered by physicians in their private practices in addition to OTP clinics. However, the current OASAS regulation Part 828 does not permit Buprenorphine administration. Buprenorphine treatment for opioid dependence is well served in the OTP setting, since clients will receive additional services such as counseling, toxicology and medical support. The proposed emergency revision will address this problem and patients will benefit from this added service.

4. Costs:

Additional costs are expected to be minimal. Any costs incurred by providers or the State will be offset by better treatment outcomes and healthier patients, which will result in lower costs for medical and other services.

a. Costs to regulated parties:

Regulated parties include patients and providers of substance abuse services. Patients should not incur additional costs as Buprenorphine is covered by Medicaid. Cost to providers remains the same.

There should be no additional costs for materials.

b. Costs to the agency, state and local governments:

OASAS is not expected to see increased cost related to administering the rule. The decision to provide buprenorphine is voluntary, and the current Part 828 methadone clinics will not be forced to provide it. There will be anticipated cost increases for state and local governments due to the weekly rate of Buprenorphine which is \$ 235.00 and the difference of a weekly rate for Methadone of \$136.02. In addition, providers may need some addition staffing for the induction phase of Buprenorphine. However, it is important to realize that the number of people treated is not changing

only their options about treatment. Patients may opt to be placed on Buprenorphine while receiving other services such as toxicology testing and counseling whereas Medicaid patients who opt for Buprenorphine treatment at physicians offices do not receive the benefit of these additional services. There will be no additional costs to counties, cities, towns or local districts.

5. Local Government Mandates:

There are no new mandates or administrative requirements placed on local governments.

6. Paperwork

Amended Part 828 regulations would not change the paperwork currently required.

7. Duplications:

There is no duplication of other state or federal requirements.

8. Alternatives:

The only other alternative is to keep the existing regulation in place. This would be detrimental to both the opioid treatment providers and patients being served.

9. Federal Standards:

The CSAT Federal regulations preserve States' authority to regulate OTPs. The Federal regulations are considered minimal and the States are authorized to determine appropriate additional regulations. Federal regulations for dispensing Buprenorphine in opioid treatment programs are more restrictive than minimal Federal regulations for dispensing in physicians. In support of reducing opioid dependence it is demonstrated that there are numerous benefits which include improved retention in treatment for patients, making OTP's more attractive to new patients, and giving patients more control over their treatment experience. In addition, patient quality of life may be improved through the reduction in daily attendance at an OTP clinic.

Regulatory Flexibility Analysis

Effect of the Rule: The proposed emergency revision to Part 828 will impact certified and/or funded providers. It is expected that the emergency revision will require providers to amend some of their policies and procedures in their treatment modality. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking medication assisted treatment for opioid addiction due to more treatment options. As a result of patients receiving these services, local governments may see a decrease in services associated with active illicit drug use such as arrests and emergency room visits. Also, local governments and districts may see a nominal increase in cost due to the weekly Buprenorphine rate but this should be offset by better patient outcomes.

Compliance Requirements: It is expected that there will be no significant changes in compliance requirements. Since providers are already required to provide utilization review, it is not expected that this regulation, will have additional costs.

Professional Services: While it is expected that programs may require additional professional services the impact is nominal because induction of Buprenorphine lasts only a few days.

Compliance Costs: Some programs may need to formally train staff to understand the pharmacology of Buprenorphine.

Economic and Technological Feasibility: Compliance with the record-keeping and reporting requirements of the emergency revision to Part 828 is not expected to have an economic impact or require any changes to technology for small businesses and government.

Minimizing Adverse Impact: This is an emergency adoption, no public comment is required, however, the subject matter experts within our agency, including the Medical Director have concluded that, in line with the Federal Standards, the addition of buprenorphine through emergency regulation is necessary for the health, safety and welfare of the public. Any impact this rule may have on small businesses and the administration of State or local governments and agencies will either be a positive impact or the nominal costs and compliance are small and will be absorbed into the already existing economic structure. The positive impact for our patients and our health care system, outweigh any potential minimal costs.

Small Business and Local Government Participation: This is an emergency adoption, therefore even though there have been informal conversations with persons affected by this regulation and the subject matter experts within the agency have decided that this emergency is necessary to protect the health, safety and welfare of the public, a formal outreach to the business community was not performed. Small businesses should not be affected by this change, and local governments running methadone clinics are not required to provide buprenorphine.

Rural Area Flexibility Analysis

A rural flexibility analysis is not provided since these proposed regulations would have no adverse impact on public or private entities in rural areas. The majority of Methadone providers are located in NYC. There are a few others upstate, but they are in cities, of various sizes. There are only

three providers located in Ulster, Broome and Montgomery which may be considered a rural area however they are in towns where the density is greater than 150 people per square mile. The compliance, recordkeeping and paperwork requirements are the minimum needed to insure compliance with state and federal requirements and quality patient care.

Job Impact Statement

The implementation of emergency regulation Part 828 will have a minimal impact on jobs in that it may require some additional staffing during the induction phase of Buprenorphine. This regulation will not adversely impact jobs outside of the agency.

Office of Children and Family Services

EMERGENCY RULE MAKING

Mandatory Disqualification of Foster and Adoptive Parents Based on Criminal History

I.D. No. CFS-01-09-00005-E

Filing No. 1326

Filing Date: 2008-12-22

Effective Date: 2008-12-29

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

Action taken: Amendment of sections 421.27 and 443.8 of Title 18 NYCRR.

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

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

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

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

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

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

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

- (i) a felony conviction at any time involving:
 - (a) child abuse or neglect;
 - (b) spousal abuse;
 - (c) a crime against a child, including child pornography;
 - (d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery[, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

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

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

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

- (a) such denial will create an unreasonable risk of harm to the physical or mental health of the child; and
- (b) approval of the applicant will not place the child's safety in jeopardy and will be in the best interests of the child].

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

Subdivision (k) of section 421.27 is repealed.

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

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

- (1) a felony conviction at any time involving:
 - (a) child abuse or neglect;
 - (b) spousal abuse;
 - (c) a crime against a child, including child pornography; or
 - (d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery[; unless the applicant or approval or certification as a foster parent or the certified or approved foster parent demonstrates that;

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

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

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

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

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

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

Subdivision (k) of section 443.8 is repealed.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 18, 2009

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

Chapter 623 of the laws of 2008 amended the criminal history review standards set forth in section 378-a(2) of the SSL. Section 5 of Chapter 623 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provision of the Chapter.

2. Legislative objectives:

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

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

3. Needs and benefits:

The regulations are necessary for OCFS to conform to federal and state statutory changes to criminal history record review standards. The regula-

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

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

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

4. Costs:

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

5. Local government mandates:

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

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

6. Paperwork:

Authorized agencies are currently required to document their criminal history record review activities. The regulations do not impose additional paperwork requirements on social services districts or voluntary authorized agencies

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

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

9. Federal standards

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect on small business and local governments.

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

2. Reporting, recordkeeping and compliance requirements:

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

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

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-09-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Education Department under the subheading "New York State Higher Education Services Corporation," by deleting therefrom the position of Associate Counsel.

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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-09-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health under the subheading "Office of the Medicaid Inspector General," by increasing the number of positions of Assistant Medicaid Inspector General from 4 to 5.

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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Consolidated Regulatory Impact Statement

1. Statutory Authority: The New York State Civil Service Commission is authorized to promulgate rules for the jurisdictional classification of offices within the classified service of the State by Section 6 of the Civil Service Law. In so doing, it is guided by the requirements of Sections 41, 42 and 43 of this same law.

2. Legislative Objectives: These rule changes are in accord with the statutory authority delegated to the Civil Service Commission to prescribe rules for the jurisdictional classification of the offices and positions in the classified service of the State.

3. Needs and Benefits: Article V, Section 6, of the New York State Constitution requires that, wherever practicable, appointments and promotions in the civil service of the State, including all its civil divisions, are to

be made according to merit and fitness. It also requires that competitive examinations be used, as far as practicable, as a basis for establishing this eligibility. This requirement is intended to provide protection for those individuals appointed or seeking appointment to civil service positions while, at the same time, protecting the public by securing for it the services of employees with greater merit and ability. However, as the language suggests, the framers of the Constitution realized it would not always be possible, nor indeed feasible, to fill every position through the competitive process. This point was also recognized by the Legislature for, when it enacted the Civil Service Law to implement this constitutional mandate, it provided basic guidelines for determining which positions were to be outside of the competitive class. These guidelines are contained in Section 41, which provides for the exempt class; 42, the non-competitive class and 43, the labor class. Thus, there are four jurisdictional classes within the classified service of the civil service and any movement between them is termed a jurisdictional reclassification.

The Legislature further established a Civil Service Department to administer this Law and a Civil Service Commission to serve primarily as an appellant body. The Commission has also been given rulemaking responsibility in such areas as the jurisdictional classification of offices within the classified service of the State (Civil Service Law Section 6). In exercising this rule-making responsibility, the Commission has chosen to provide appendices to its rules, known as Rules for the Classified Service, to list those positions in the classified service which are in the exempt class (Appendix 1), non-competitive class (Appendix 2), and labor class (Appendix 3).

In effect, all positions, upon creation at least, are, by constitutional mandate, a part of the competitive class and remain so until removed by the Civil Service Commission, through an amendment of its rules upon showing of impracticability in accordance with the guidelines provided by the Legislature. The guidelines are as follows. The exempt class is to include those positions specifically placed there by the Legislature, together with all other subordinate positions for which there is no requirement that the person appointed pass a civil service examination. Instead, appointments rest in the discretion of the person who, by law, has determined the position's qualifications and whether the persons to be appointed possess those qualifications. The non-competitive class is to be comprised of those positions which are not in the exempt or labor classes and for which the Civil Service Commission has found it impracticable to determine an applicant's merit and fitness through a competitive examination. The qualifications of those candidates selected are to be determined by an examination which is sufficient to insure selection of proper and competent employees. The labor class is to be made up of all unskilled laborers in the service of the State and its civil divisions, except those which can be examined for competitively.

4. Costs: The removal of a position from one jurisdictional class and placement in another is descriptive of the proper placement of the position in question in the classified service, and has no appreciable economic impact for the State or local governments.

5. Local Government Mandates: These amendments have no impact on local governments. They pertain only to the jurisdictional classification of positions in the State service.

6. Paperwork: There are no new reporting requirements imposed on applicants by these rules.

7. Duplication: These rules are not duplicative of State or Federal requirements.

8. Alternatives: Within the statutory constraints of the New York State Civil Service Commission, it is not believed there is a viable alternative to the jurisdictional classification chosen.

9. Federal Standards: There are no parallel Federal standards and, therefore, this is not applicable.

10. Compliance Schedule: No action is required by the subject State agencies and, therefore, no estimated time period is required.

Consolidated Regulatory Flexibility Analysis

The proposal does not affect or impact upon small businesses or local governments, as defined by Section 102(8) of the State Administrative Procedure Act, and, therefore, a regulatory flexibility analysis for small businesses is not required by Section 202-b of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on small businesses or local governments.

Consolidated Rural Area Flexibility Analysis

The proposal does not affect or impact upon rural areas as defined by Section 102(13) of the State Administrative Procedure Act and Section 481(7) of the Executive Law, and, therefore, a rural area flexibility analysis is not required by Section 202-bb of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on rural areas.

Consolidated Job Impact Statement

The proposal has no impact on jobs and employment opportunities. This proposal only affects the jurisdictional classification of positions in the Classified Civil Service.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-09-00011-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Program Associate from 2 to 3 and Special Office Assistant from 7 to 8.

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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-01-09-00012-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State under the subheading "Commission on Public Integrity," by decreasing the number of positions of Training Assistant from 2 to 1 and by increasing the number of positions of Information Technology Specialist (CPI) from 3 to 4.

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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

Jurisdictional Classification

I.D. No. CVS-01-09-00013-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services under the subheading "Institutions," by deleting therefrom the position of Correctional Videotape Monitor; in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Director, Procurement Services Group (1); in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by deleting therefrom the position of Surrogate Committee Nursing Coordinator (1); and, in the Department of Labor under the subheading "State Employment Relations Board," by deleting therefrom the position of Trial Examiner (Employment Relations Board) (1).

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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Education Department

**EMERGENCY
RULE MAKING**

Licensure of Clinical Laboratory Technologists, Cytotechnologists, Clinical Laboratory Technicians and Histological Technicians

I.D. No. EDU-41-08-00007-E

Filing No. 1325

Filing Date: 2008-12-19

Effective Date: 2008-12-19

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

Action taken: Addition of sections 52.41, 79-13.5, 79-13.6 and Subpart 79-16 and amendment of sections 79-13.4, 79-14.4 and 79-15.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 212(3); 6501 (not subdivided); 6504 (not subdivided); 6507(2)(a), (3)(a) and (4)(a); 6508(1); 8606-a(2) and (3); 8610(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment implements the requirements of Article 165 of the Education Law, as amended by Chapter 204 of the Laws of 2008, among other things, establishing a new profession for histological technicians and extending grandparenting provisions for clinical laboratory technologists, clinical laboratory technicians and cytotechnologists. It also establishes standards for registered college preparation programs that lead to licensure or certification as a histological technician, in accordance with the statutory requirements.

We estimate that approximately 1,000 persons are employed in these four professional areas and will require either licensure or submission of an application under the extended grandparenting provisions by January 1, 2009, in order to continue to practice these professions. The State Education Department expects that most current practitioners will be licensed under the grandparenting provisions established in the proposed amendment. These clinical laboratory practitioners are employed in the State's clinical laboratories to perform tests needed for the diagnosis and treatment of illness and disease. They perform important functions that protect the general welfare, health, and safety of residents of New York State.

The proposed amendment was adopted at the September 15-16, 2008 Regents meeting as an emergency measure, effective September 23, 2008, to preserve the general welfare, to ensure that procedures and standards are in place to license individuals by the effective date of the statutory licensure requirement for histological technicians and so that clinical laboratory technicians, cytotechnologists and clinical laboratory technologists can apply for licensure under the expanded grandparenting provisions by the application deadline of January 1, 2009, thereby enabling such practitioners to be licensed in a timely manner to meet the health care needs of the residents of New York State. A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on October 8, 2008.

The proposed rule will be adopted as a permanent rule at the December 15-16, 2008 Regents meeting. Pursuant to the State Administrative Procedure Act section 203(1), the earliest the adopted rule can become effective is upon its publication in the State Register on January 8, 2009. However, the September emergency rule will expire on December 21, 2008, 90 days after its filing with the Department of State on September 23, 2008.

An emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Licensure of clinical laboratory technologists, cytotechnologists, clinical laboratory technicians and histological technicians.

Purpose: To implement the provisions of Article 165 of the Education Law, as amended by Chapter 204 of the Laws of 2008.

Substance of emergency rule: The Board of Regents proposes to add sec-

tions 52.41, 79-13.5, 79-13.6 and Subpart 79-16 and amend sections 79-13.4, 79-14.4 and 79-15.4 of the Regulations of the Commissioner of Education, effective September 23, 2008.

Section 52.41 sets forth the requirements for a registered program leading to licensure as a certified histological technician.

Sections 52.41(a), (b) and (c) require that a registered program be a histological technician program leading to an associate or higher degree and contain didactic and clinical education and include curricular content in specific subject areas and a supervised clinical experience of at least 30 hours per week for 8 weeks or their equivalent, as determined by the department, in the practice of histological technician.

Section 79-13.4(a) provides that an applicant may be licensed by the department as a clinical laboratory technologist by meeting the requirements specified in the special provisions of section 8607(1)(a) of the Education Law if he or she applies for licensure by January 1, 2009 and meets the requirements for licensure by July 1, 2009, unless an earlier date is required.

Section 79-13.4(b) requires an applicant to file an application and pay the fee for the license and initial registration by January 1, 2009, except as provided by section 79-13.4(b)(4)(vii).

Sections 79-13.4(b)(4)(i),(ii),(iii) and (iv) provide for licensing under special provisions if applicants have performed duties of a clinical laboratory technologist, as prescribed in each subparagraph, by December 31, 2007.

Section 79-13.4(b)(4)(vi) provides for licensing under special provisions if applicants are certified as clinical laboratory technicians and hold a specified baccalaureate or higher degree by July 1, 2009, and have completed the required experience by July 1, 2009.

Section 79-13.4(b)(4)(vii) provides for licensing under special provisions for applicants who have competently performed the duties of a clinical laboratory technologist in a clinical laboratory operated in accordance with Title V of Article 5 of the Public Health Law for a period of not less than six months over the three years immediately preceding December 31, 2007, as verified by a director of the clinical laboratory, and have filed an application, paid the fee for the initial license and first registration period on or before September 1, 2013.

Section 79-13.4(c) provides that applicants who have filed an application for licensure as a clinical laboratory technologist by January 1, 2009 and have met the requirements for licensure under this section by July 1, 2009, shall be deemed qualified to practice from the date of application until the department has acted on the application.

Section 79-13.5(a) provides for a restricted clinical laboratory license to perform certain examinations and procedures within the definition of clinical laboratory technology in the areas of histocompatibility, cytogenetics, stem cell process, flow cytometry/cellular immunology, and molecular diagnosis to the extent such molecular diagnosis is included in genetic testing-molecular and molecular oncology.

Section 79-13.5(b) authorizes the Department to issue a certificate that also includes the practice of molecular diagnosis to restricted licensees employed at National Cancer Institute designated cancer centers or at teaching hospitals that are eligible for distributions pursuant to section 2807-m(3)(c) of the Public Health Law.

Sections 79-13.5(c)(1) and (2) require applicants seeking a restricted license to meet the requirements set forth in Section 8610(1) of the Education Law and successfully complete a baccalaureate or higher degree program in the major of biology, chemistry, the physical sciences, or mathematics from a program registered by the department or the substantial equivalent and complete a training program meeting certain requirements.

Sections 79-13.5(c)(2)(v)(a),(b),(c),(d) and (e) provide specific training content requirements for applicants seeking a certificate in the areas of histocompatibility, cytogenetics, stem cell process, flow cytometry/cellular immunology, and molecular diagnosis to the extent such molecular diagnosis is included in genetic testing-molecular and molecular oncology.

Section 79-13.5(c)(2)(v)(f) provides for a certificate in the area of molecular diagnosis for applicants employed at a National Cancer Institute designated cancer center or at a teaching hospital that is eligible for distributions pursuant to Public Health Law section 2807-m(3)(c) if the applicants meet specified training requirements.

Section 79-13.5(c)(3) requires an applicant seeking a restricted license to certify that he or she has reviewed the rules and regulations of the New York State Department of Health and the U.S. Department of Health, relating to practice as a clinical laboratory technologist, in accordance with written guidance from the department.

Section 79-13.6(a) authorizes the department to issue a limited license and registration enabling a limited licensee to perform certain examinations and procedures to an applicant who meets one of the following three requirements: (1) the applicant is licensed as a clinical laboratory technologist, or the equivalent as determined by the department, in another juris-

dition; (2) the applicant has received a baccalaureate degree or higher in the biological, chemical, or physical sciences and received training in a clinical laboratory, provided such education and training are acceptable to the department; and (3) the applicant received a baccalaureate degree or higher in the biological, chemical, or physical sciences or in mathematics, and has served as a research assistant in a research laboratory working on specified research, procedures and examinations.

Section 79-13.6(b) requires an applicant seeking a limited license to certify that he or she has reviewed New York State and federal rules and regulations relating to practice as a clinical laboratory technologist in New York State in accordance with written guidance from the Department.

Section 79-14.4(a) provides that an applicant may be licensed by the department as a cytotechnologist by meeting the requirements specified in the special provisions of section 8607(1)(c) of the Education Law if he or she applies for licensure by January 1, 2009 and meets the requirements for licensure by July 1, 2009, unless an earlier date is required.

Section 79-14.4(b)(1) requires that applicants file an application and pay the fee for the license and initial registration by January 1, 2009.

Section 79-14.4(b)(4)(i) changes the date by which an applicant shall have completed his or her education requirements to July 1, 2009 and the date by which he/she shall have successfully performed the duties of a cytotechnologist for two years over the past five years to December 31, 2007.

Section 79-14.4(b)(4)(iii) provides a new grandparenting pathway for applicants who have performed the duties of a cytotechnologist for at least five years (7200 hours) prior to December 31, 2007, as verified in writing by a director of a clinical laboratory, as defined in the Public Health Law.

Section 79-14.4(c) permits an applicant seeking a cytotechnology license who files before January 1, 2009 and meets the requirements for licensure by July 1, 2009 to be deemed qualified to practice as a cytotechnologist from the date of filing the application until the department has acted on it.

Sections 79-15.4 (a) and (b)(1) provide that an applicant may be certified by the department as a clinical laboratory technician by meeting the requirements specified in the special provisions of section 8607(1)(b) of the Education Law if he or she applies for licensure and pays the fee for the initial certification and registration by January 1, 2009, except as otherwise provided in 79-15(b)(4)(iv) and meets the requirements for certification by July 1, 2009, unless an earlier date is required.

Sections 79-15.4(b)(4)(i) and (ii) extend the date by which applicants shall meet the professional education requirements for certification to July 1, 2009 and the date by which applicants shall successfully perform the duties of a clinical laboratory technician until December 31, 2007, as required in each subparagraph for licensure under such special provisions.

Section 79-15.4(b)(4)(iv) adds a special provision to provide for the licensure of applicants who have competently performed the duties of a clinical laboratory technician in a clinical laboratory operated in accordance with Title V of Article 5 of the Public Health Law for a period of not less than six months over the three years immediately preceding December 31, 2007, as verified by a director of the clinical laboratory, and have filed an application, paid the fee for the initial license and first registration period on or before September 1, 2013.

Section 79-15.4(c) provides that applicants who have applied for licensure as a clinical laboratory technician by January 1, 2009 and certified that he or she will have met the requirements for licensure under this section by July 1, 2009, shall be deemed qualified to practice from the date of application until the department has acted on the application.

Section 79-16.1(a) provides that applicants seeking certification as histological technicians prior to September 1, 2013 may meet the professional education requirements for admission to the examination in either subdivision (b) or (c) of this section and for those applying after September 1, 2013, they must meet the requirements of subdivision (b).

Section 79-16.1(b)(1) defines "acceptable accrediting agency" for purposes of subdivision (b).

Sections 79-16.1(b)(2)(i) and (ii) require an applicant seeking certification as a histological technician to hold an associate or higher degree from a program in histological technician registered as leading to certification, or a substantially equivalent program that is accredited by an acceptable accrediting agency or recognized by the civil authorities of the jurisdiction in which it is located as a histological technician program.

Sections 79-16.1(c) (1) and (2) establish time-limited alternative professional education requirements for those applying for licensure prior to September 1, 2013 and define acceptable accrediting agency for purposes of such subdivision.

Section 79-16.1(d) requires an applicant seeking admission to the examination to certify that he or she has reviewed New York State and federal rules and regulations relating to practice as a clinical laboratory technologist in New York State, in accordance with written guidance from the Department.

Sections 79-16.2(a) and (b) require applicants to pass a general licens-

ing examination for histological technicians, acceptable to the department, with a converted score of at least 75, as determined by the State Board for Clinical Laboratory Technology.

Section 79-16.3(a) provides for a limited permit to practice as a histological technician to be issued upon the recommendation of the State Board for Clinical Laboratory Technology.

Sections 79-16.3(b)(1), (2) and (3) require an applicant to file an application for a limited license, pay a fee of \$50.00 and meet all requirements for certification, except the examination requirement and submit documentation that the application will be under the general supervision of a clinical laboratory director and defines general supervision for purposes of this paragraph.

Section 79-16.3(d) provides that the limited permit is valid for not more than one year and may be renewed at the discretion of the department for one additional year for documented good cause.

Section 79-16.4(a) provides that an applicant may be licensed under the grandparenting provisions of section 8607(1)(d) of the Education Law by applying for certification by January 1, 2009, except as otherwise provided in section 79-16.4(b)(2)(iv), and shall meet the requirements for certification by July 1, 2009, unless an earlier date is required in this section.

Sections 79-16.4(b)(1), (2), (3) and (4) provide for licensure under special grandparenting provisions if the applicant meets certain requirements.

Section 79-16.3(c) provides that an applicant who applies on or before January 1, 2009 and who meets certain requirements by July 1, 2009 shall be deemed qualified to practice from the date of filing the application until such time as the department has acted upon the application.

Section 79-16.5 (a) provides for the issuance of a limited license and registration as a histological technician to perform certain examinations and duties of histological technicians if the applicant satisfies the requirements established in Education Law section 8610(2) and has received an education acceptable to the department, including an associate or higher degree in the biological, chemical, or physical sciences.

Section 79-16.5(b) requires an applicant seeking a limited license to certify that he or she has reviewed the New York State and federal rules and regulations relating to practice as a histological technician in accordance with guidance from the department.

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-41-08-00007-EP, Issue of October 8, 2008. The emergency rule will expire February 16, 2009.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department to determine and set fees for certification and permits, for which fees are not set otherwise provided.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law for the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Subdivision (2) section 8606-a of the Education Law authorizes the State Education Department to establish implementing standards for the education that must be successfully completed to qualify for certification as a histological technician.

Subdivision (3) section 8606-a of the Education Law authorizes the State Education Department to establish requirements for the examination that must be successfully completed to qualify for certification as a histological technician.

Subdivision (3) section 8610 of the Education Law authorizes the State Education Department to establish implementing standards for the issuance of restricted licenses and limited licenses.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statutes in that it establishes standards implementing education, examination, limited permit, and grandparenting requirements for certification as a histological technician; establishes program content and other requirements for the issuance of restricted and limited licenses; and updates the grandparenting requirements for clinical laboratory technologists, cytotechnologists, and clinical laboratory technicians in accordance with statutory changes made to Article 165 of the Education Law by Chapter 204 of the Laws of 2008.

3. NEEDS AND BENEFITS:

Chapter 204 of the Laws of 2008 amended Article 165 of the Education Law. Article 165, as amended, establishes a new profession, certified histological technicians, which is a profession that is both title and practice protected, under the State Board for Clinical Laboratory Technology. In addition, it amends Article 165 to provide special provisions to grandparent clinical laboratory technologists, cytotechnologists and certified clinical laboratory technicians and histological technicians and to establish restricted licenses and limited licenses for clinical laboratory technologists and limited licenses for histological technicians. The proposed regulation is needed to implement Article 165 of the Education Law by establishing professional study, examination, limited permits, limited licenses and special grandparenting provisions for histological technicians; to establish training and other requirements that applicants for restricted licenses as clinical laboratory technologists and limited licenses as clinical laboratory technologists and histological technicians must meet; and to expand the grandparenting provisions for clinical laboratory technologists, clinical laboratory technicians and cytotechnologists.

In addition, in accordance with the requirements of Article 165 of the Education Law, the proposed regulation is needed to set forth standards for registered college programs that lead to certification as a histological technician.

4. COSTS:

(a) Costs to State government: The proposed regulation will not impose any additional costs on State government, including the State Education Department, over and above the costs imposed by Article 165 of the Education Law for administering this new profession.

(b) Cost to local government: The proposed promulgation establishes requirements for licensure as a clinical laboratory technologist and cytotechnologist and certification as a clinical laboratory technician and as a histological technician. The regulation will not impose additional costs on local government. The regulation will not impose additional costs on licensed clinical laboratories that are operated by local governments.

(c) Cost to private regulated parties: The proposed regulation will not impose any other costs on regulated parties over and above those imposed by Article 165 of the Education Law. Article 165 establishes licensure and registration fees. Article 165 requires applicants for certification as a histological technician to be educated with an associates degree. The proposed amendment establishes the content of the course work for the program, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation establishes the content of the training programs for persons seeking a restricted license as a clinical laboratory technologist in the practice of histocompatibility, cytogenetics, stem cell process, flow cytometry/cellular immunology, and molecular diagnosis to the extent such molecular diagnosis is included in genetic testing-molecular and molecular oncology.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 165 of the Education Law and concerns requirements that individuals must meet to be licensed as clinical laboratory technologists and cytotechnologists and certified as clinical laboratory technicians and as histological technicians. Therefore, the regulation does not regulate local governments.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or recordkeeping requirements beyond those imposed by Article 165 of the Education Law.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of clinical laboratory technologists, cytotechnologists or clinical laboratory technicians and certified histological technicians, the subject of the proposed regulation. The education requirements for the licensure or certification in these fields require applicants to certify that they have reviewed the rules and regulations of the U.S. Department of Health and Human Services, relating to practice in these fields, in accordance with written guidance by the State Education Department.

10. COMPLIANCE SCHEDULE:

Applicants for licensure or certification must comply with the regulation on the stated effective dates. In accordance with section 8607(2) of the Education Law, the regulation permits a transition period for applicants who apply on or before January 1, 2009 under the special provisions available to certain individuals who have already practiced in these fields or who have specified related education and/or experience (grandparenting applicants). Such applicants who certify to a good faith belief that they will have met the requirements for licensure or certification by the prescribed completion dates, which in no case will be later than July 1, 2009, will be deemed qualified to practice from the date of filing the application with the State Education Department until such time as the Department has acted upon the application. In addition, the regulation permits a transition period for applicants to apply on or before September 1, 2013, if they have competently provided clinical laboratory technology services for a period of not less than six months in the three years immediately preceding December 31, 2007, as verified by a director of the clinical laboratory, in a clinical laboratory operated in accordance with Title V of Article 5 of the Public Health Law and the regulations promulgated thereunder.

Regulatory Flexibility Analysis**1. EFFECT OF RULE:**

This proposed amendment implements Chapter 204 of the Laws of 2008 which amends Article 165 of the Education Law by establishing requirements for the licensure of individuals as clinical laboratory technologists or cytotechnologists and certification of individuals as clinical laboratory technicians or histological technicians, and establishes standards for registered college preparation programs leading to licensure as certified histological technicians. Such licensed and certified individuals are employed at clinical laboratories licensed and regulated by the New York State Department of Health. There are approximately 3,800 such licensed clinical laboratories in New York State, of which about 586 are classified as small businesses and 183 are operated by local governments of New York State.

2. COMPLIANCE REQUIREMENTS:

The regulation establishes education and examination requirements for individuals to be licensed as certified histological technicians and content for training programs for clinical laboratory technologists with restricted licenses in histocompatibility, cytogenetics, stem cell process, flow cytometry/cellular immunology, or molecular diagnosis. Therefore, the regulation does not regulate small businesses or local governments, except for one provision. That provision concerns the definition for "general supervision" by the director of a clinical laboratory for holders of limited permits in these professions or for those in training programs for restricted licenses as clinical laboratory technologists. Education Law section 8606 requires the Department to define this term. While the regulation does not directly regulate the clinical facility, it requires the applicant for the limited permit to document that the level of supervision will meet the regulatory requirement before a limited permit will be issued by the State Education Department.

The regulation requires the director of the clinical laboratory to be readily available for consultation with the permit holder, as needed, and to be responsible for the performance and findings of all tests carried out by the permit holder, either by directly overseeing such testing, or by delegating this responsibility to an authorized supervisor who is on-site within the laboratory.

3. PROFESSIONAL SERVICES:

The proposed regulation will not require licensed clinical laboratories that are classified as small businesses or operated by local governments to hire professional services to comply.

4. COMPLIANCE COSTS:

The regulation will not impose additional costs on licensed clinical laboratories that are small businesses or are operated by local governments. The standard for general supervision by the director of a licensed clinical laboratory of limited permit holders in the three professions was developed after consultation with the Department of Health, and is consistent with the level of supervision that the director already is required to provide such employees by Department of Health regulations. Therefore, the regulation will not impose additional costs on the licensed clinical laboratories that are classified as small businesses or operated by local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed regulation will not impose any technological requirements on regulated parties, including those that are classified as small businesses, and is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The standard for general supervision by a director of a clinical laboratory for limited permit holders in the four professions will allow licensed clinical laboratories, including those that are small businesses or operated by local governments, a great deal of flexibility to determine how the limited permit holder will be supervised. The proposed regulatory standards for general supervision by directors of licensed clinical laboratories of limited permit holders in the three professions of cytotechnologists, clinical laboratory technicians and clinical laboratory technologists are consistent with the level of supervision that the director already is required to provide such employees by the Department of Health regulations. Because of the flexibility of the proposed standards and the fact that they are consistent with Department of Health requirements, different standards for licensed clinical laboratories that are small businesses or operated by local governments are not appropriate or necessary.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The State Board for Clinical Laboratory Technology and its extended panel include members who have experience working in clinical laboratories that are classified as small businesses or operated by local governments. Both the Board and its extended panel worked with staff of the State Education Department to develop the proposed regulation. In addition, the State Education Department communicated with directors and other supervisory staff of clinical laboratories, including those that are small businesses or operated by local governments, during the development of the proposed regulation. Staff of the Department met with individuals who are or have been employed as clinical laboratory technologists, cytotechnologists, clinical laboratory technicians and histological technicians at clinical laboratories that are small businesses and operated by local governments, among others, to obtain their input during the development of the regulation. The Department also worked with the Department of Health to provide the proposed regulation to licensed clinical laboratories across the State, including those that are small businesses and operated by local governments of the State.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed regulation will apply statewide to all individuals who apply for licensure as clinical laboratory technologists and cytotechnologists and certification as clinical laboratory technicians and histological technicians (approximately 1,000 individuals), and colleges statewide that seek registration of programs leading to licensure and certification as a histological technician, including those located in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Chapter 204 of the Laws of 2008 amends Article 165 of the Education Law. Article 165, as amended, provides for the licensing of clinical laboratory technologists and cytotechnologists and the certification of clinical laboratory technicians and histological technicians, and establishes the profession of certified histological technician as practice and title protected, under a State Board for Clinical Laboratory Technology. The proposed regulation implements the requirements of Article 165 of the Education Law, as amended, by establishing specific education and examination standards that an applicant for certification as a histological techni-

cian must meet and the training program content that clinical laboratory technologists seeking a restricted license must meet.

In addition, in accordance with the requirements of Article 165 of the Education Law, the proposed regulation sets forth standards for registered college preparatory programs that lead to certification as a histological technician.

The proposed regulation establishes requirements for a limited permit to practice as a certified histological technician. It establishes a definition for general supervision by the director of a clinical laboratory of the limited permit holder, and a fee for the limited permit.

As authorized by statute, the proposed regulation also implements statutory provisions designed to permit applicants in all four clinical laboratory technology professions who are already practicing in these fields or have related education and/or experience to be licensed or certified under special provisions (grandparenting applicants).

The proposed regulation does not impose reporting requirements over and above those required by statute. In accordance with the statutory requirements, applicants for licensure or certification in these four professions will have to submit to the State Education Department evidence of meeting licensure or certification requirements. Colleges and universities seeking registration of programs leading to licensure or certification in these fields will be required to submit to the State Education Department evidence of meeting program registration requirements.

The proposed regulation will not impose recordkeeping requirements on regulated parties, and will not require regulated parties to obtain professional services to comply beyond the educational services needed to meet the professional education requirements for licensure or certification.

3. COSTS:

The proposed regulation requires an applicant for a limited permit to practice as a histological technician to pay an application fee of \$50. The regulation will not impose any other costs on regulated parties over and above those imposed by Article 165 of the Education Law, which establishes licensure and registration fees. Article 165 requires applicants for certification as a histological technician to be educated at the associate degree level. The proposed regulation simply establishes the content of the coursework for the college preparation program, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation's standard for general supervision by the director of a licensed clinical laboratory of limited permit holders in the new profession of histological technician is consistent with the level of supervision that the director already is required to provide such employees pursuant to Department of Health regulations and is similar to the requirements for limited permits in the other three clinical laboratory professions. Therefore, the regulation will not impose additional costs on clinical laboratories for supervision. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed regulation implements and clarifies education and examination standards required for certification as a histological technician, as directed by Article 165 of the Education Law. It also establishes requirements for college programs registered as leading to licensure in that field. The statute makes no exception for individuals or entities located in rural areas of the State. The State Education Department has determined that such requirements should apply to all individuals seeking licensure no matter their geographic location to ensure an adequate standard of competency across the State. Likewise, the Department has determined that registered college programs that lead to licensure should be subject to the same requirements, regardless of their geographic location, to ensure that candidates for licensure are adequately prepared. Because of the nature of the proposed rule, alternative approaches for entities located in rural areas of the State were not considered.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing parties having an interest in the practice of the clinical laboratory technology professions. Included in this group was the State Board for Clinical Laboratory Technology, and professional associations and collective bargaining organizations representing individuals practicing these professions. These groups have members who live or work in rural areas. Staff of the State Education Department met with individuals who are employed in the four fields to obtain their input during the development of the regulation. These groups included individuals from rural areas of New York State. In addition, comments were solicited from the sole college in the State that offers programs that prepare histological technicians, which is located in a rural area. The Department also worked with the Department of Health to provide the proposed regula-

tion to licensed clinical laboratories across the State, including those that are located in rural areas of New York State.

Job Impact Statement

Chapter 204 of the Laws of 2008 amends Article 165 of the Education Law by establishing education and examination standards, grandparenting provisions and requirements for limited licenses and limited permits for the certification of histological technicians. It also expands the grandparenting provisions for the licensure of clinical laboratory technologists and cytotechnologists and the certification of clinical laboratory technicians and establishes standards for registered college preparation programs that lead to certification as a histological technician, in accordance with statutory requirements.

The proposed amendment implements statutory requirements and directives and will have no impact on jobs or employment opportunities, beyond the impact of Article 165 of the Education Law. Therefore, any impact on jobs and employment opportunities by establishing a licensure requirement for histological technicians is attributable to the statutory requirements, not the proposed rule, which simply establishes consistent implementing standards as directed by statute.

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

EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

Museum Collections Management Policies

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

Filing No. 1324

Filing Date: 2008-12-19

Effective Date: 2008-12-19

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

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

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided) and 217(not subdivided)

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

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

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

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

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

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning

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

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

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the March 2009 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Museum collections management policies.

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

Text of emergency/proposed rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective December 19, 2008, to read as follows, provided that such amendment shall expire and be deemed repealed March 18, 2009:

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

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective December 19, 2008, to read as follows, provided that such amendment shall expire and be deemed repealed March 18, 2009:

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

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

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

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

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

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

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

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

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivi-*

sion, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

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

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

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

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

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

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

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

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

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 18, 2009.

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

Data, views or arguments may be submitted to: Jeffrey W. Cannell, Deputy Comm. for Cultural Education, State Education Department, Cultural Education Center, Room 10C34, Albany, NY 12230, (518) 474-5930, email: ppaolucc@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

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

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

4. COSTS:

- (a) Costs to the State: None.
- (b) Costs to local governments: None.
- (c) Costs to private, regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any additional paperwork requirements on such institutions.

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum

chartering database as of November 2008), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

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

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

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

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

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

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

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

3. COMPLIANCE COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

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

Job Impact Statement

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

NOTICE OF ADOPTION

Public Librarian Professional Certificates

I.D. No. EDU-40-08-00021-A

Filing No. 1332

Filing Date: 2008-12-23

Effective Date: 2009-01-08

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

Action taken: Amendment of section 90.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 208(not subdivided), 254(not subdivided), 272(1)(k)(3) and 279(not subdivided)

Subject: Public librarian professional certificates.

Purpose: To require holders of certificates issued on or after January 1, 2010 to complete professional development.

Text or summary was published in the October 1, 2008 issue of the Register, I.D. No. EDU-40-08-00021-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Licensure of Clinical Laboratory Technologists, Cytotechnologists, Clinical Laboratory Technicians and Histological Technicians

I.D. No. EDU-41-08-00007-A

Filing No. 1331

Filing Date: 2008-12-23

Effective Date: 2009-01-07

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

Action taken: Addition of sections 52.41, 79-13.5, 79-13.6 and Subpart 79-16 and amendment of sections 79-13.4, 79-14.4 and 79-15.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided); 210(not subdivided); 212(3); 6501(not subdivided); 6504(not subdivided); 6507(2)(a), (3)(a) and (4)(a); 6508(1); 8606-a(2) and (3); 8610(3)

Subject: Licensure of clinical laboratory technologists, cytotechnologists, clinical laboratory technicians and histological technicians.

Purpose: To implement the provisions of Article 165 of the Education Law, as amended by Chapter 204 of the Laws of 2008.

Text or summary was published in the October 8, 2008 issue of the Register, I.D. No. EDU-41-08-00007-EP.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on October 8, 2008, the State Education Department received the following comments on the proposed rule.

COMMENT: One comment was received relating specifically to section 79-13.5(a) of the Regulations of the Commissioner of Education, which specifies the "areas" for which restricted licenses may be issued for clinical laboratory technologists. The commenter states that the restricted clinical laboratory license of "stem cell process" is very similar to "stem cell processing," which is a tissue bank function that is not subject to Article 5, Title V of the Public Health Law. The commenter recommends that the scope of practice be detailed in regulation or, at least, in Education Department guidance.

The commenter notes that there is "some overlap with some other laboratory testing areas, some of which are separately listed as areas eligible

for restricted licensure (such as flow cytometry)". It notes that "'ABO/Rh confirmatory typing' is also listed which would fall into the laboratory testing area of immunohematology." The commenter states her belief that "immunohematology testing is highly complex, consistent with the Centers for Medicare and Medicaid Services regulations, and should be performed only by staff extensively trained in that area, and should not be performed by persons conducting flow cytometry or other analyses on stem cell specimens." The commenter notes that the mention of ABO and Rh testing in the training requirements for "stem cell process" has generated confusion and led some readers to conclude that such testing indeed is considered to fall into the scope of practice for this area. The commenter recommends deletion of this testing from the training requirements or, at a minimum, that it be absent from any descriptions of the applicable scope of practice and an explanation be provided why it must be included in the training. If the intent is indeed to include such testing within the scope of practice for this area, the commenter recommends clear delineation of the meaning of "confirmatory typing" and exactly what testing is included.

RESPONSE: The term "stem cell process" was used in the statutory amendment to Article 165 of Title VIII under Chapter 204 of the Laws of 2008, and, as such, cannot be changed without a legislative amendment. With regard to the comment concerning the need for a defined scope of practice, the content of the training program for stem cell process is established in this regulation, which also requires that applicants must have reviewed the rules and regulations of the NYS Department of Health and the federal government relating to practice as a clinical laboratory technologist in New York State. In establishing the training program content for the regulations, the Education Department sought assistance and advice from the State Board, representatives of the profession, hospitals and facilities that provide the tests and procedures, as well as the Department of Health, and the comments received were submitted for review by these and other groups prior to inclusion in the proposed regulations. The Education Department provides guidance to professionals licensed under Title VIII of the Education Law through Questions and Answers related to professional practice, and those questions and answers are published on the website and in hard copy, as needed. In addition, the Education Department publishes Practice Alerts and Guidelines for Practice to provide additional guidance to applicants and licensees.

With regard to the comment regarding the overlap among laboratory testing areas, the scope of practice of clinical laboratory technology in New York State is a generic scope, and licensees may engage in all of the tests, procedures, and processes that fall within the broad scope of the profession if such licensees know they are competent to provide such services, including all practices found within the restricted license areas. The restricted licenses are not specialty licenses, but are clinical laboratory technology licenses restricted to a practice area. The overlapping practices that fall in the restricted license areas actually all fall within the generic license. Additionally, section 6505 of the Education Law provides, "No definition of the practice of a profession shall be construed to restrain or restrict the performance of similar acts authorized in the definition of other professions." Moreover, as noted by the commenter, the testing procedures are subject to the laboratory licensure and director requirements for a Certificate of Qualification for each area of testing, and this provides an additional safeguard that laboratory tests and procedures will be performed with skill and competence by licensed employees.

NOTICE OF ADOPTION

School Library Systems

I.D. No. EDU-42-08-00001-A

Filing No. 1330

Filing Date: 2008-12-22

Effective Date: 2009-01-07

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

Action taken: Amendment of section 90.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 282, 283 and 284

Subject: School library systems.

Purpose: To update and clarify certain terminology relating to the functions of and State aid for school library systems.

Text or summary was published in the October 15, 2008 issue of the Register, I.D. No. EDU-42-08-00001-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 Struffolino, State Education Department, Office of Counsel, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 473-4921

Assessment of Public Comment

The agency received no public comment.

Department of Labor

EMERGENCY RULE MAKING

The Number of Crane Board Members Needed to Conduct Crane Operators Examination and Hold Administrative Hearings

I.D. No. LAB-01-09-00007-E

Filing No. 1328

Filing Date: 2008-12-22

Effective Date: 2008-12-26

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

Action taken: Amendment of section 23-8.5 of Title 12 NYCRR.

Statutory authority: General Business Law, section 483; Labor Law, sections 21 and 27

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

Specific reasons underlying the finding of necessity: This is a very busy season for practical examinations for crane operators. This amendment will allow for more testing days to be scheduled thereby eliminating delays in getting examinations.

Subject: The number of Crane Board Members needed to conduct crane operators examination and hold administrative hearings.

Purpose: To modify the requirements regarding crane operator examinations and administrative hearings for crane operators.

Text of emergency rule: 12NYCRR Section 23-8.5 is amended to read as follows:

§ 23-8.5 Special provisions for crane operators

(a) Finding of fact. The board finds that the trade or occupation of operating cranes of the type described in subdivision (b) of this section, in construction, demolition and excavation work involves such elements of danger to the lives, health and safety of persons employed in such trade or occupation as to require special regulations for their protection and for the protection of other employees and the public in that such cranes may fall over, collapse, contact electric power lines, dislodge material and cause such material to fall or fail to support intended loads and convey them safely, unless such cranes are operated by persons of proper ability, judgment and diligence.

(b) Limited application of this section. This section applies only to mobile cranes having a manufacturers' maximum rated capacity exceeding five tons or a boom exceeding forty feet in length and to all tower cranes operating in construction, demolition and excavation work. The word crane as used in this section refers to tower cranes and to such mobile cranes of the following type: a mobile, carrier-mounted, power-operated hoisting machine utilizing hoisting rope and a power-operated boom which moves laterally by rotation of the machine on the carrier.

(c) Certificate of competence required. No person, whether the owner or otherwise, shall operate a crane in the State of New York unless such person is a certified crane operator by reason of the fact that:

(1) He holds a valid certificate of competence issued by the commissioner to operate a crane; or

(2) He is at least 21 years of age and holds a valid license issued by the Federal government, a State government or by any political subdivision of this or any other State and such license has been accepted in writing by the commissioner as equivalent to a certificate of competence issued by him; or

(3) He is a person who:

(i) is at least 21 years of age and is employed by the Federal government, the State or a political subdivision, agency or authority of the State and is operating a crane owned or leased by the Federal government, the State or such political subdivision, agency or authority and his assigned duties include operation of a crane;

(ii) is at least 21 years of age and is employed only to test or repair a crane and is operating it for such purpose while under the direct supervision of a certified crane operator; or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and his assigned duties include the operation of a crane;

(iii) an apprentice or learner who is at least 18 years of age and who has the permission of the owner or lessee of a crane to take instruction in its operation and is operating such crane under the direct supervision of a certified crane operator or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and whose assigned duties include the operation of a crane.

(d) Application forms and photographs. An application for a certificate of competence or for a renewal thereof shall be made on forms provided by the commissioner. Upon notice from the commissioner to an applicant that a certificate of competence or a renewal thereof will be issued to him, the applicant must forward photographs of himself in such numbers and sizes as the commissioner shall prescribe, and such photographs must have been taken within 30 days of the request for such photographs.

(e) Physical condition. No person suffering from a physical handicap or illness, such as epilepsy, heart disease, or an uncorrected defect in vision or hearing, that might diminish his competence, shall be certified by the commissioner.

(f) Experience required. An applicant for a certificate of competence must be at least 21 years of age and must have had practical experience in the operation of cranes for at least three years and, in addition, have a practical knowledge of crane maintenance.

(g) Examining board. The commissioner may appoint an examining board which shall consist of at least three members, at least one of whom shall be a crane operator who holds a valid certificate of competence issued by the commissioner, and at least one of whom shall be a representative of crane owners. The members of the examining board shall serve at the pleasure of the commissioner and their duties will include:

(1) The examination of applicants and their qualifications, and the making of recommendations to the commissioner with respect to the experience and competence of the applicants;

(2) The holding of hearings regarding appeals following denials of certificates;

(3) The holding of hearings prior to determinations of the commissioner to suspend or revoke certificates, or to refuse to issue renewals of certificates;

(4) The reporting of findings and recommendations to the commissioner with respect to such hearings;

(5) The acts and proceedings of the examining board shall be in accordance with regulations issued by the commissioner.

(h) General examination. Each applicant for a certificate of competence will, and each applicant for a renewal thereof may, be required by the commissioner to take an appropriate general examination.

(i) Operating examination. An applicant who passes the general examination will also be required to take a practical examination in crane operation, except that the commissioner may waive this requirement with respect to an applicant for a renewal of a certificate of competence. *The commissioner may designate one or more individual members of the examining board to conduct the practical examination. When the practical examination is conducted by a single member of the examining board, the applicant must achieve a passing score from the member to receive a certificate of competence. When the practical examination is conducted by two or more members of the examining board, the applicant must achieve a passing score, which shall be calculated as an average of all scores received from the members that conducted the practical examination. The procedures used regarding the conduct of the practical examination, the establishment of the passing score and the assignment of the board members to conduct individual examinations shall be set forth in a guidance document approved by the examining board.*

(j) Contents of certificate. Each certificate of competence issued shall include the name and address of the certified crane operator, a brief description of him for the purpose of identification and his photograph.

(k) Term of certificate. Each certificate of competence or renewal thereof shall be valid for three years from the date issued, unless its term is extended by the commissioner or unless it is sooner suspended or revoked. The commissioner may extend the term of any certificate of competence as he may find necessary to relieve a certified operator of unnecessary hardship.

(l) Carrying certificate. Each certified crane operator shall carry his certificate on his person when operating any crane and failure to produce the certificate upon request by the commissioner shall be presumptive evidence that the operator is not certified.

(m) Renewals. An application for renewal of a crane operator's certificate of competence shall be made within one year from the expiration date of the certificate sought to be renewed, except that the commissioner may extend the time to make such application to prevent any undue hardship to a certified crane operator.

(n) Suspension, revocation, refusal to renew, denials of certificates, hearings.

(1) The commissioner may, upon notice to the interested parties and

after a hearing before the examining board, suspend or revoke a certificate of competence upon finding that the certified operator has failed to comply with an order of the commissioner or that the certified operator is not a person of proper competence, judgment or ability in relation to the operation of cranes, or for other good cause shown.

(2) Prior to a determination by the commissioner not to renew a certificate of competence, the commissioner shall require a hearing before the examining board upon notice to the interested parties.

(3)(i) An applicant whose application for a certificate has been denied by the commissioner may, upon his written request made to the commissioner within 30 days after the mailing or personal delivery to him of a notice of such denial, have a hearing before the examining board.

(ii) Such hearing shall be held by the examining board which (4) *The commissioner shall designate a panel of two or more members of the examining board to conduct all hearings required pursuant to this section. The commissioner may also designate a hearing officer to assist the panel in conducting the hearings. The panel shall make its recommendations to the commissioner within three days after such hearing has been concluded. A written notice of the commissioner's decision, containing the reasons therefor, shall be promptly given to the certified operator or applicant, as the case may be, and to any interested parties who appeared at the hearing. Every such hearing shall be held in accordance with such regulations as the commissioner may establish.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 22, 2009.

Text of rule and any required statements and analyses may be obtained from: Thomas Mc Govern, Department of Labor, Counsel's Office, State Office Campus, Bldg. 12, Room 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcgovern@labor.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Section 27(2) of the Labor Law authorizes the Commissioner of Labor to adopt, amend or repeal safety and health standards which provide reasonable and adequate protection to the lives, safety and health of employees and of persons lawfully frequenting a place of employment. The Commissioner may also require licenses as a condition of carrying on an industry, trade, occupation or process which the Commissioner finds contains special elements of danger. Section 21 of the Labor Law also gives the Commissioner general rulemaking authority. Finally, Section 483 of the General Business Law gives the Commissioner of Labor the authority to prescribe such rules and regulations as may be necessary and proper for the administration and enforcement of Article 28-D relating to Crane Operators and Blasters. Such regulations may provide for examinations, categories of certificates, licenses or registrations (Section 483(2)).

2. Legislative Objectives:

The rulemaking accords with the public policy objectives the Legislature sought to advance when it adopted Section 483 of the General Business Law. These regulatory revisions clarify administrative procedures regarding the administration of the practical examinations for crane operator's certificates and the conduct of hearings by the examining board regarding the revocation, suspension, refusal to renew or denial of a crane operator's certificate. The Department is seeking to make it easier to schedule the practical examinations by authorizing the Commissioner to designate one or more members of the examining board to conduct the exams. Currently, at least a quorum of the entire Crane Examining Board must be present to conduct the exams. Crane Board members already dedicate more than forty (40) days annually to crane testing and hearings without compensation. This is a substantial commitment of time given that Board members are responsible for operating their own businesses or are employed full-time. Finding adequate number of Board members to participate in each testing series can be difficult given limitations on availability, particularly in the construction season when demand for testing can be at its highest. The proposed rule will facilitate the conduct of examinations by allowing one or more members of the Board to be present. Additionally, the Department wants to make it easier to get administrative hearings scheduled regarding the revocation, suspension, refusal to renew or denial of a crane operator's certificate. The Board is responsible for conducting these hearings and making a report and recommendation to the Commissioner. Individuals seeking review of adverse determinations regarding their operator's certificate expect timely access to the hearing process.

It is important that crane operators not have any delays in getting their exams scheduled. It is even more important that administrative hearings not be delayed due to scheduling difficulties.

3. Needs and Benefits:

As previously mentioned, the members of the Board serve without salary or other compensation (General Business Law, Section 483(3)). The

time estimated to conduct the exams and hearings is approximately 40 days per year. While Board members have been extremely generous in making themselves available for their duties, it is increasingly difficult to find testing and hearing dates when sufficient numbers of the board members are available for tests or hearings given other professional and personal demands on their time. This creates many scheduling difficulties and can create delays which affect crane operator applicants and individuals who are seeking hearings to review adverse determinations regarding their operator certificates. Moreover, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem. The amendments to 12 NYCRR Section 23-8.5 establishing a smaller number of Board members who need to be present at either examinations or hearings will make it easier to schedule the exams, thereby making certain that there will be no delays in the process. Additionally, the amendments will also make it easier to schedule administrative hearings. It is very important that there not be any delays in the hearing process.

4. Costs:

This amendment imposes no compliance costs upon state or local governments. There will be no additional costs to crane operators. There will also be no additional costs to the Labor Department.

5. Local Government Mandates:

The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork:

The proposed amendment imposes no new paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other State or federal requirements.

8. Alternatives:

The primary alternative is to leave the regulation unchanged.

Another alternative would be to add new Board members, thereby increasing the pool of available members for testing and/or hearing panelists. The current regulations provide for the Commissioner of Labor to appoint the Board members and that the Board be comprised of at least three members. Accordingly, the Commissioner could increase the number of Board members to provide for a larger pool of members to conduct tests or hearings. However, as described above, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem.

9. Federal Standards:

There are no federal standards regulating the testing and licensing of crane operators, or administrative hearings relating thereto.

10. Compliance Schedule:

The provisions of this amendment will take effect immediately.

Regulatory Flexibility Analysis

These emergency regulations make revisions regarding the number of Crane Examining Board members required to be in attendance in order to conduct a practical examination for a crane operator's certificate and how passing scores will be calculated when the exam is conducted by two or more members of the Board. The emergency regulations also permit the Commissioner to designate a panel of two or more members of the Board together with an administrative hearing officer to conduct hearings regarding the suspension, revocation, refusal to renew, and the denials of a certificate to operate a crane. The practical examination was already required in regulation and does not impose any new requirement on crane operators. The regulations also currently provide for hearings for crane operators who have their certificate of competence to operate a crane suspended, revoked, refused to renew or denied. This amendment merely clarifies that the hearings need not be conducted by the entire examining board, but rather may be conducted by a panel of two or more members of the board.

The emergency regulations do not impose any additional obligations on any local government or business entity. Nor do they impose any adverse economic impact, reporting or recordkeeping, or other compliance requirements on small businesses and/or local governments. Rather, they are intended to facilitate the testing of individuals seeking crane operator certificates, some of whom are employees of local governments or businesses. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. On the contrary, the rule is intended to facilitate the timely conduct of crane operator examinations and hearings. Therefore, the regulations will not have a substantial adverse economic impact on rural areas or reporting,

recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation relates to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, refusal to renew, or denial of a crane operator's certificate. Currently, regulations already require that a crane operator pass a practical examination before being given a certificate to operate a crane. Additionally, where a certificate is suspended, revoked, refused a renewal or denied, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation merely clarifies that the practical examination may be administered by one or more members of the Board and that the hearings may be conducted by a panel of two or more members of the Board. Accordingly, the regulation will not have a substantial adverse impact on jobs and employment opportunities. Rather, the rule will encourage and support employment opportunities for qualified crane operators because it will facilitate the testing of individuals seeking crane operator licenses. Because it is evident from the nature of the regulation that it will have a beneficial impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Therefore, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Provision of Safety Ropes and System Components for Firefighters at Risk of Being Trapped at Elevations

I.D. No. LAB-01-09-00008-E

Filing No. 1329

Filing Date: 2008-12-22

Effective Date: 2008-12-22

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

Action taken: Addition of section 800.7 to Title 12 NYCRR.

Statutory authority: Labor Law, article 2, section 27; section 27 a; title 7, section 200

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

Specific reasons underlying the finding of necessity: To give Fire Departments sufficient time to conduct risk assessments regarding the type of safety ropes and rescue systems needed, to purchase needed equipment, and to train firefighters in their use before effective date of the statutory requirement.

Subject: Provision of safety ropes and system components for firefighters at risk of being trapped at elevations.

Purpose: To insure that firefighters are provided with appropriate ropes and system components for self-rescue and emergency escape.

Text of emergency rule: 12NYCRR Part 800.7 Emergency Escape and Self Rescue Ropes and System Components for Firefighters

(a) **Title and Citation:** Within and for the purposes of the Department of Labor, this part may be known as Code Rule 800.7, Emergency Escape and Self Rescue Ropes and System Components for Firefighters, specifying the requirements for safety ropes and associated system components.

(b) **Purpose and Intent:** This rule is intended to ensure that firefighters are provided with necessary escape rope and system components for self rescue and emergency escape and to establish specifications for such ropes and system components.

(c) **Application:** This part shall apply throughout the State of New York to the State, any political subdivision of the State, Public Authorities, Public Benefit Corporations or any other governmental agency or instrumentality thereof employing firefighters within the meaning of § 27-a of the Labor Law.

This Part shall not apply to such employers located in a city with a population of over one million.

(d) **DEFINITIONS.** Within this part, the following terms shall have the meanings indicated:

(1) "System Components" means safety harnesses, belts, ascending devices, carabiners, descent control devices, rope grab devices, and snap links.

(2) "Escape Rope" means a single purpose, single use, emergency escape (Self-rescue) rope.

(3) "Interior Structural Fire Fighting" means the physical activity of

fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

(4) "Interior Structural Fire Fighter" means a firefighter who is designated by their employer to perform interior structural firefighting duties in an immediately dangerous to life and health (IDLH) atmosphere and is medically qualified to use self-contained breathing apparatus (SCBA) as defined in 29 CFR 1910.134.

(5) "Entrapment at Elevations" means a situation where a firefighter finds the normal route of exit is made unusable by fire, or other emergency situation, that requires the firefighter to immediately exit the structure from an opening not designed as an exit, that is above the ground floor and at an elevation above the surrounding terrain which would reasonably be expected to cause injury should the firefighter be required to exit.

(e) **Specifications for Escape Ropes and System Components**

Escape ropes and system components provided to firefighters shall conform to the requirements of "The National Fire Protection Association Standard 1983, Standard on Fire Service Life Safety Rope and Equipment for Emergency Services" in effect at the time of their manufacture. Escape ropes and system components purchased after the effective date of this Part shall conform to the 2006 edition (NFPA1983- 2006) of such standard.

(f) **Risk Assessment and Equipment Selection**

(1) Each employer who employs firefighters shall develop a written risk assessment to be used to determine under what circumstances escape ropes and system components will be required and what type will be required to protect the safety of firefighters in its employ. In performing the assessment, the employer shall:

(i) Identify the types and heights of buildings and other structures in the area the firefighters are expected to work. Such area shall include the regular scope of the fire district or other area covered by the fire department in question as well as any other districts or communities to which the fire department provides mutual aid with a reasonably predictable frequency.

(ii) Assess the standard operating procedures followed by the department with regard to rescue of firefighters from elevations.

(iii) Identify the risks to firefighters of being trapped at an elevation during structural fire fighting operations given the types of buildings or other structures located in the area(s) in which firefighters are expected to work. Identification of the risk in question shall include an assessment of:

(a) the extent to which standard operating procedures already in place will mitigate the risks identified;

(b) the type of escape ropes and system components that will be necessary to protect the safety of firefighters if operating procedures do not sufficiently mitigate the risk.

(2) Should the risk assessment establish that firefighters employed by the department performing interior structural firefighting are reasonably expected to be exposed to the risk of entrapment at elevations, the employer shall provide to each interior structural firefighter in its employ a properly fitted escape rope and those system components which meet the specifications for such rope and system components set forth in Part 800.7(e) and which would mitigate the danger to life and health associated with such risk.

(g) **Training**

(1) The employer shall ensure that each firefighter who is provided with an escape rope and system components is instructed in their proper use by a competent instructor. Instruction shall include the requirements of paragraph (h) of this Part and the user information provided by the manufacturer as required by NFPA 1983 Chapter 5.2 for each rope and system component.

(2) Instruction shall include hands-on use of the equipment in a controlled environment.

(3) A record of such instruction including the name of the individual being trained, the name of the individual delivering the training, and the date on which the training was provided shall be maintained by the employer until such time as the firefighter is no longer employed by the employer or the employer delivers a subsequent training on this topic, whichever comes first.

(h) **Employer Duties.** In addition to the duties set forth in Parts 800.7(f) and (g), employers covered by this Part shall have the following duties:

(1) To ensure the adequacy of the safety ropes and system components, the employer shall routinely inspect and ensure that:

(i) Existing safety ropes and system components meet the codes, standards, and recommended practices adopted by the Commissioner;

(ii) Existing safety ropes and system components still perform their function by taking precautions to identify any of their limitations through reasonable means, including, but not limited to:

(a) Checking the labels or stamps on the equipment; and

(b) Checking any documentation or equipment specifications;

and

- (c) contacting the supplier or approval agency.
- (iii) Firefighters are informed of the limitations of any safety rope or system components;
- (iv) Firefighters are not allowed or required to use any safety rope or system components beyond their limitations;
- (v) Existing or new safety ropes and system components have no visible defects that limit their safe use;
- (vi) Safety ropes and system components are used, cleaned and maintained according to the manufacturer's instructions;
- (vii) Firefighters are instructed in identifying to the employer any defects the firefighter may find in safety ropes and system components; and
- (viii) Any identified defects are corrected or immediate action is taken to eliminate the use of the equipment by:
- (a) Ensuring that escape rope and system components with defects which are repairable are tagged as unsafe and stored in such a manner that they cannot be used until repairs are made;
- (b) Ensuring that escape rope and system components that cannot be repaired are immediately destroyed or rendered unusable as an escape rope and system components; and
- (c) Ensuring that any escape rope that has been utilized under load for the purpose of self rescue / emergency escape is immediately removed from service, destroyed, or rendered unusable as an escape rope and immediately replaced.

(2) The employer's routine inspection cycle required by this paragraph shall be based upon the volume of activity the Department undertakes but, in no case, any less frequently than once each month.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 21, 2009.

Text of rule and any required statements and analyses may be obtained from: Thomas Mc Govern, NYS Department of Labor, Counsel's Office, State Office Campus, Bldg. 12, Rm 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcgovern@labor.state.ny.us

Regulatory Impact Statement

Statutory Authority: The legislature placed the amendment in Article 2 Section 27a of the Labor Law, Public Employee Safety and Health Act. Section 4 of the Act directs the Commissioner to promulgate rules to provide for the enforcement of the amendment and require that the latest edition of the National Fire Protection Association's standard on Life Safety Ropes and System Components be adopted.

The Commissioner has broad authority to promulgate rules and regulations under New York State Labor Law Article 2, Section 27a; Article 2, Section 27; Article 7, Section 200.

Legislative Objective: The intent of the Legislature was to insure that firefighters are provided with the appropriate ropes and system components to allow self-rescue from upper stories of buildings should they become trapped. The Legislature also specified the national consensus standard to which life safety ropes and system components must conform as well as the testing criteria that must be followed by the manufacturer.

Needs and Benefits: Firefighters occasionally become trapped on upper stories during fire suppression activities. Many times the firefighter is rescued by ladders or aerial apparatus; however, there are cases where the trapped fire fighter cannot be reached or the rapid development of the emergency situation does not allow for rescue by other means and those cases could result in death or serious injury. One such case involved 6 trapped firefighters who were forced to jump from a fourth story. Four were seriously injured and two died of their injuries. Some of these injuries and deaths were attributable, in part, to either the lack of rescue ropes or the failure of the rope involved.

Costs: The ropes and system components needed to equip a firefighter for self rescue can be obtained for as little as \$60.00. New York City has provided each of its firefighters with a system that costs more than \$400.00. The proposed rule contains no minimum cost threshold. This allows the employer to take appropriate steps to reduce the cost of providing the equipment required by the rule, so long as the employer provides equipment appropriate for the risks identified in its risk assessment. Moreover, the equipment need only be provided to interior structural firefighters who work in areas where they could become trapped. Employers need not purchase or provide ropes and rescue devices to apparatus drivers and fire policemen or other employees not expected to perform interior structural firefighting.

Additional costs would be incurred for training in instructing employees in the use of the selected equipment and self rescue techniques. These costs will vary but as an example of the potential costs associated with the rule, one manufacturer sells a system which costs \$400.00 while the training in the system use is \$250.00 per person. On the other hand, the manufacturer will offer train the trainer instruction to a Fire Department Trainer for a one time cost; this instruction will then permit the Department to train its affected employees at a much lower cost than it would

incur if it purchased the manufacturer's training for each of its members. Also, as mentioned elsewhere in this rulemaking, fire departments may also consider other methods to reduce training costs such as using in-house trainers and consolidating training classes with fellow departments to maximize training resources.

Paperwork: The paperwork requirements contained in the proposed rule are minimal. The employer must certify that the hazard assessment has been completed and must maintain that document. The employer must also keep training record identifying all employees trained under the rule. Since other standards and laws already require that training records be maintained, this provision will have minimal impact on the employer.

Local Government Mandates: Fire protection is a function of local government and as such the monetary burden of providing this equipment will be borne by the local government responsible for fire protection. The legislature did not provide funding for mandate relief.

Duplication: This rule does not duplicate any state or federal regulations.

Alternatives: The legislation requiring promulgation of the rule provided little room for any alternative to be considered. The amendment specifically requires equipment that meets a defined national consensus standard for specific purposes. The alternatives provided by the Department involve the judgment of the Department with regard to the risks faced by its employees performing interior structural firefighting and the ropes and equipment needed to mitigate that risk. The agency determined that the employer would be best suited to survey the hazards in the local protection area and select the equipment based upon the hazards firefighters would be exposed to, as opposed to imposing its own stringent requirements specifying the type of equipment needed.

Federal Standards: There are no federal standards with like requirements.

Compliance Schedule: The provisions of the amendment are effective on May 18, 2008 and employers will be required to be in compliance by November 1, 2008. The effective date of the rule will be upon adoption. The compliance aspects are not difficult and under normal inspection protocols an employer would be given 30 days to comply.

Regulatory Flexibility Analysis

Effect of the Rule: There is no requirement for small businesses; the rule will apply to all governmental agencies that employ a firefighter. The rule does not apply to New York City. Virtually all local government will be affected by this rule. Impacts should be low with compliance costs at less than \$100.00 per firefighter in most areas of the state. In many smaller municipalities, minimal costs would accrue depending on the nature of the structures in the area protected.

Local Governments with hazards requiring the provision of protective equipment and training for firefighters may collaborate on the training and use quantity buying practices to reduce costs. Training requirements could also be met by utilizing free training provided by the Department of State, Office of Fire Prevention and Control. However, that agency does not have the resources to train every firefighter affected by this rule.

Compliance Requirements: The Law requires that each employer that employs firefighters must provide emergency escape rope and system components appropriate for the risk to which firefighters in their employ are exposed. To accomplish this the employer must conduct an assessment of the types of structures in the fire protection area, determine what the hazard to employees would be and then provide the appropriate harnesses, ropes and equipment so that employees may self rescue should they become trapped at an elevation expected to cause injury should the individual be required to jump. The law also requires that the employer is required to provide training in the use of the provided equipment and inspect and assure the safety of the equipment. The authorizing legislation was also specific as to the design and testing of the provided equipment citing a national consensus standard, The National Fire Protection Association Standard 1983, "Life Safety Rope and Equipment for Emergency Responders". The law requires the commissioner to adopt the latest edition which is the 2006 edition.

NFPA 1983-2006 established the design, construction and testing requirements for emergency escape and life safety ropes and system components and all such equipment must bear a label attesting to its conformance.

To meet the compliance requirements the employer must:

- 1 Conduct a hazard assessment to establish the risk.
- 2 Select the appropriate ropes and system components.
- 3 Provide properly fitted ropes and system components (many belts and harnesses are sized) to each Firefighter at risk.

4 Train each firefighter in the use of the selected rope and system components.

5 Inspect the ropes and system components periodically to assure they are safe for use.

Professional Services: Training on the required subject matter is provided free of charge by the Office of Fire Prevention and Control. OFPC classes are limited and would not meet the needs of all employers. There are also many experts in the field who provide rope training and smaller employers could collaborate and share the expense of training.

Under provisions of the executive law, career departments must have a Municipal Training Officer who would be capable of providing the training.

Compliance Costs: Purchase of the ropes and system components would be relatively inexpensive in suburban fire protection areas. As the height and complexity of structures increase the equipment will become more expensive and the required training more comprehensive.

Many suppliers can provide ropes and attachment devices at a price range from \$ 20.00 to \$50.00. Harnesses or escape belts can run from \$50.00 to \$100.00. On the high end of the cost spectrum, the system developed and used by FDNY costs approximately \$400.00 per firefighter and the Manufacturer (Petzil) requires that the employer participate in their training program at \$250.00 per person. They will provide train the trainer services.

Economic and Technological Feasibility: The emergency regulation does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

Minimizing Adverse Impact: The emergency regulation is necessary to implement Labor Law, Section 27-a(4)(c), as enacted by chapter 433 of the Laws of 2007 and amended by chapter 47 of the Laws of 2008, and to that extent, does not exceed any minimum State standards. Section 27-a(4)(c) requires the Commissioner to adopt the codes, standards and recommended practices promulgated by the most recent edition of the National Fire Protection Association 1983, Standard on Fire Service Life Safety Ropes and System Components, and as are appropriate to the nature of the risk to which the firefighter shall be exposed. This emergency regulation has been carefully drafted to meet these State statutory requirements and does not impose any additional costs or compliance requirements on local governments that employ firefighters beyond those inherent in the statute.

Small Business and Local Government Participation: This emergency regulation has no impact on small business. The regulation applies to all governmental agencies that employ a firefighter. The Department solicited input on this regulation by holding meetings with employer groups such as the New York State Association of Fire Chiefs and Regional Fire Administrators from around the State. The regulation was also discussed with the Counsel for the Firemen's Association of the State of New York. Additionally, input was solicited from the Office of Fire Prevention and Control and from the Department of State Counsel. Local governments that employ firefighters will also have an opportunity to comment on this regulation when it is subsequently filed as a proposed regulation and may offer comments at the public hearing that will be held regarding the proposed regulation.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to all public employers who employ firefighters. As many as 800 employers in rural or suburban areas will be affected by this rule.

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

The rule will require the employer to maintain training records to show that the firefighters have been trained. Employers are already required to maintain training records by other rules such as the OSHA requirements promulgated under 12NYCRR Part 800. The proposed rule does not appear to impose an additional recordkeeping burden on the employer and will require a minimum amount of effort to comply. The training record must be maintained until the training is repeated, for a period of one year.

Compliance with the overall rule will be less and less burdensome as the size of the employer decreases. The employer must perform a hazard assessment to determine the level of risk to which its employees are exposed and use that information to select the appropriate equipment to be provided. Depending on the height and types of structures in the area where the employer provides fire protection, the equipment could be a little as a rope, belt, and attachment devices.

The employer must also train employees in the techniques of self rescue. Many Fire Departments have the expertise in-house to provide this service, particularly in rural areas where building size and configurations may limit the risks addressed by the rule. Moreover, in rural areas rope work is part of high angle rescue work which a number of fire departments in mountainous areas provide. Individuals trained in high angle rescue techniques would require little or no extra training to meet the requirements of this proposed rule.

Training provided by the State Office of Fire Prevention and Control also covers the criteria involved. However, this office does not have sufficient staff resources to provide the training on a statewide basis. Some rope and rescue system manufacturers will provide training in their equipment; there will typically be a cost associated with this service, however.

Another option open to employers is to group together and hire a professional trainer to provide a train-the-trainer course for individuals from a number of departments who would then train the members of their own department. This method would make the expense of hiring a contractor a shared expense.

3. Costs:

There are two primary areas of cost imposed by the rule: the cost of purchasing and maintaining the equipment and the cost of providing the required training. The cost of the equipment would fluctuate by department, depending upon the risks identified in the risk assessment conducted by the Department and the equipment needed to address the risk. Each firefighter who is at risk of entrapment at elevation must be provided with properly fitted (belts and harnesses come in different sizes) self-rescue rope and other components such as a belt and carabiners. A rural fire department employer could reasonably outfit each employee covered by the rule for as little as \$100.00; if employers were to coordinate purchases and buy these items in bulk that cost could be reduced substantially. We should note that some of the manufactured systems cost as much as \$400.00. In most rural areas such expensive systems should not be necessary.

Costs associated with the provision of training in systems are discussed above. If training is provided in-house, costs would be minimal or none at all. A professional trainer could be provided by a manufacturer "free of charge" if the employer purchases a sufficient number of units of equipment. [Note: although this is classified as a free service, it is really a service whose cost is included in the equipment purchase cost.] If the professional trainer's services are not provided along with the purchase, the charges for the trainer's time could range up to \$500.00.

4 Minimizing adverse impact:

The only adverse impact resulting from the proposed rule are the costs associated with compliance. As discussed previously, covered employers can try to minimize such costs through coordination with other fire departments to purchase equipment in bulk and through train the trainer sessions which will allow one or more members to deliver the training to their fellow firefighters.

5. Rural area participation:

The proposed rule was posted on the department web site along with a contact. Numerous emails and phone calls were taken during the 6 months it was posted.

Meetings were held with employer groups such The New York State Association of Fire Chiefs and Regional Fire Administrators from around the state. The rule was discussed with the Counsel for The Firemen's Association of the State of New York.

Meetings were also held with representatives of the Office of Fire Prevention and Control and with Department of State Counsel.

Comments from these meetings and contacts were used to develop the rule.

Job Impact Statement

This rule concerns the provision of safety ropes and system components for public sector Fire Fighters. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Notification of Incidents and Access to Records

I.D. No. MRD-01-09-00006-E

Filing No. 1327

Filing Date: 2008-12-22

Effective Date: 2008-12-22

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

Action taken: Addition of section 624.8 and amendment of sections 624.1, 624.2, 624.3, 624.4, 624.5, 624.6 and 624.20 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07 and 13.09(b), 33.23 and 33.25 (L. 2007, ch. 24)

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

Specific reasons underlying the finding of necessity: Additional notifications will result in better monitoring, regarding whether the health and safety needs of the individuals are properly addressed and whether appropriate steps are being taken to address potentially harmful situations.

Subject: Notification of incidents and access to records.

Purpose: To conform regulations governing incidents to Jonathan's Law notification requirements and access to records provisions.

Substance of emergency rule: • Effective December 22, 2008. Replaces similar emergency regulations that were effective October 1 and December 30, 2007, and March 27, June 25, and September 23, 2008.

- No changes were made in the December 22, 2008 regulations compared to the September 23, 2008 regulations.

General:

- The regulations amend existing OMRDD regulations on incidents and abuse (Part 624).
- The regulations apply to all facilities and services operated, certified, authorized or funded through contract by OMRDD. This includes residential facilities, day programs, HCBS waiver services, and Medicaid Service Coordination.
- New notification and disclosure requirements do not apply to events or situations which are not under the auspices of the agency, such as allegations of abuse by family members in private residences. Requirements that agencies intervene and take appropriate action in these events or situations are unchanged.
- The OMR 147(I) and OMR 147(A) are removed from the regulation. OMRDD is replacing these forms with a single revised form.
- The OMR 147 must be used for all reportable incidents, serious reportable incidents and allegations of abuse.
- Full documentation of compliance is required.
- Existing requirements are unchanged for notification to CQCAPD, law enforcement officials, Statewide Central Register of Child Abuse and Maltreatment, etc.
- For the Willowbrook class, agencies must continue to comply with the incident reporting requirements of the Willowbrook Permanent Injunction.
- An old requirement for a "written preliminary finding" within 24 hours of the occurrence or discovery has been eliminated. The OMR 148 or equivalent report on actions taken takes the place of the written preliminary finding.
- The use of a diagnostic procedure (e.g. x-ray) when the results are negative (nothing broken) is no longer considered a reportable injury.
- Service coordinators must be notified of all reportable incidents,

serious reportable incidents and allegations of abuse whether or not the event or situation is "under the auspices" of the agency or sponsoring agency.

Regulations to implement Section 33.23 MHL:

- The regulations build on notification requirements in pre-existing OMRDD regulations, which required notification of serious reportable incidents and allegations of abuse to guardians, parents and advocates/correspondents.
- The following types of events/situations are subject to the new requirements:
 - Reportable incidents in the categories of injury, medication error and death.
 - Serious reportable incidents in the categories of injury, missing person, medication error and death.
 - All allegations of abuse.
- Current notification requirements are maintained for serious reportable incidents which are in the other categories (restraint, possible criminal act, and sensitive situation). Notification must occur within 24 hours of completion of the OMR 147.
- Neither notification nor disclosure is required for reportable incidents in the category of sensitive situation or for events/situations which do not rise to the level of reportable incidents (e.g. "agency reportable incidents").
- The new requirements require notification to one of the following: guardian, parent, spouse or adult child.
- Exceptions:
 - The guardian, parent, spouse or adult child objects to notification to himself or herself.
 - The person receiving services is a capable adult who objects to the notification being made to someone else.
 - The person who would otherwise be notified is the alleged abuser.
- If there is no guardian, parent, spouse or adult child (or they are unavailable), but the person has an advocate or correspondent, notification should be made to that individual in the same manner. Advocates/correspondents must also be offered a meeting and must be sent the report on actions taken. Upon request, advocates/correspondents must be sent the redacted OMR 147. (Note: the advocate or correspondent is not eligible to request disclosure of the investigation report and other investigation documents).
- If there is no guardian, parent, spouse or adult child (or they are unavailable), and the person receiving services is a "capable adult" as defined in the regulations, the person receiving services must be notified. In addition, the person receiving services must be offered a meeting and must receive the report on actions taken.
- The notification must be by telephone or in person, or by other methods at the request of the recipient of the notice.
- The notification must be made within 24 hours of the completion of the OMR 147.
- The notice must include:
 - A description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any,
 - An offer to meet with the chief executive officer or designee, and
 - For allegations of abuse, an offer to provide information on the status and resolution of the allegation (this is a pre-existing requirement).
- Upon request, a copy of the OMR 147 reporting form must be provided to the person receiving services, guardian, parent, spouse, adult child, or advocate/correspondent. Records must be redacted.
- The agency must provide a written report on actions taken to address the incident or alleged abuse for every incident and allegation subject to the new notification process.
 - The report must be provided to the individual that was notified.
 - The report must include: any immediate steps taken in response to the incident or alleged abuse to safeguard the health or safety of the person receiving services, and a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.
 - The report must be on a form developed by OMRDD or a similar agency form.
 - The report must be provided within 10 days of the completion of the OMR 147.
 - The report on actions taken cannot include names of others involved in the incident/allegation or investigation or information tending to identify them.

Regulations to implement Section 33.25 MHL:

- The regulations require the release of records and documents pertaining to allegations and investigations into abuse under the auspices of the agency.
- Only guardians, parents, spouses and adult children who are considered to be a “qualified person” according to the definition in the Mental Hygiene Law, are eligible to receive records.
- If the otherwise eligible requestor is the alleged abuser he or she is not eligible to receive records.
- If the consumer is a capable adult and objects to the release of records, the otherwise eligible requestor is not eligible to receive records.
- Requests must be in writing.
- Documents and records must be released 21 days after the closure of the alleged abuse case or 21 days after the request, if the request is made after closure.

For purposes of determining when the 21 day clock begins, closure is considered the time when the standing committee has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive.

- Records must be redacted.
- Agencies are required to release records pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007.
- Agencies are also required to release records pertaining to allegations of abuse covering the period Jan. 1, 2003 to May 5, 2007. Qualified persons have until Dec. 31, 2010 to make these requests.
- Records may not be disseminated by recipients.

Redaction (applicable to the release of documents and records pursuant to Section 33.25 MHL and the OMR 147). The following should be redacted:

- Names or other information tending to identify people receiving services and employees. Redaction shall be waived if the employee or person receiving services authorizes disclosure (unless redaction is needed because the information would tend to identify a different person whose identity is shielded by the regulations). The definition of employee is very inclusive, but only for the purposes of redaction of these records in compliance with the new law and the implementing regulations. It includes consultants, contractors, volunteers, family care providers and family care respite/substitute providers, and individuals who live in home of the provider.
- Names or other information tending to identify anyone who made a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 21, 2009.

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

c. Section 33.23 of the Mental Hygiene Law, which requires specific incident notifications and the release of specified reports.

d. Section 33.25 of the Mental Hygiene Law, which requires the release of records and documents pertaining to allegations and investigations of abuse.

2. Legislative objectives: These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), 33.23 and 33.25 of the Mental Hygiene Law. The promulgation of these amendments will provide a more extensive notification process for certain incidents and allegations of abuse. In addition, the amendments provide greater access by specified

individuals to records and documents pertaining to allegations and investigations of abuse.

3. Needs and benefits: Chapter 24 of the Laws of 2007 (MHL Sections 33.23 and 33.25), otherwise known as “Jonathan’s Law,” was signed by the Governor on May 5, 2007 and was effective immediately.

The regulatory amendments are necessary to implement the new laws and to make longstanding OMRDD regulations related to incidents and abuse consistent with the statutory requirements. In addition, these amendments clarify ambiguities in the law, as well as provide more specific direction and guidance to providers so that implementation is more effective and consistent statewide. Further, the regulations build on the notification process requirements established by statute to extend certain provisions to advocates and correspondents who are not “qualified persons” and to require compliance by all providers in the OMRDD system, not just “facilities” as specified in the law.

The new law and the associated regulations require providers to implement a more extensive notification process for certain incidents and all allegations of abuse. This notification process will provide timely information about incidents that affect the health or safety of a person receiving services to the following: a person’s guardian, parent, spouse, adult child or advocate/correspondent. In addition to an initial telephone notification, the individual will have access to the initial incident/allegation of abuse report, will be provided a report on initial actions taken and will be offered the opportunity to meet with the agency Chief Executive Officer/DDSO Director (or a designee) to discuss the incident or allegation of abuse.

The law and implementing regulations also provide a qualified person with access to records and documents pertaining to allegations and investigations of abuse. For this purpose a qualified person is defined in Mental Hygiene Law 33.16 and may include: persons receiving services or who formerly received services; and guardians, parents, spouses and adult children of such persons. The regulations extend applicability of the new requirements from only events occurring “at a facility” as specified by statute to allegations of abuse occurring while individuals are receiving facility-based services at a location away from the facility. In addition, the regulations extend applicability to services in the OMRDD system which are not facility-based, such as at-home residential habilitation and supported employment. OMRDD considers that allegations of abuse by employees should be treated the same regardless of the type of service received or location of service delivery.

4. Costs:

a. The amendments impose minor additional costs beyond the cost of complying with the new laws. Compliance with the new laws will likely require additional expenditures for personnel, paperwork, phone charges and postage. Although pre-existing OMRDD regulations already required notification of some types of incidents and allegations of abuse, the law requires notification (with its attendant costs) of additional incidents. In addition, the law requires that a report on actions taken be provided for each incident and allegation of abuse subject to the new notification requirements. Additional meetings may occur as a result of the mandated offer to hold a meeting. Lastly, documents and records must be provided upon request and must be redacted in accordance with the law.

While the statute limited the individuals being notified to “qualified persons,” the regulations extended the new notification process requirements to include advocates and correspondents. While advocates and correspondents were required to be notified of some incidents by the pre-existing OMRDD regulations, minor additional costs will be incurred through both notification of additional incidents and through the additional features of the notification process imposed by Jonathan’s Law, such as the provision of the report on actions taken.

In addition, the statute only applied to allegations of abuse occurring at a facility. However, providers in the OMRDD system operate many services which are not “facilities,” such as service coordination, supported employment, and at-home residential habilitation. The OMRDD regulations extended the requirements of Jonathan’s Law to include all services in the OMRDD system, as well as allegations of abuse when individuals are receiving facility-based services at a location away from the facility. This extension applies to both the notification process and the eligibility to request records and documents pertaining to allegations and investigations of abuse.

OMRDD is unable to quantify the modest additional costs that will be incurred by these extensions of the statutory requirements.

b. OMRDD will incur additional costs as a provider of state-operated services as noted above. These additional costs cannot be quantified.

OMRDD will use existing staff to administer this rule and does not anticipate any significant expenditure related to its administration. There are minimal additional expenditures related to informing and training providers of both Jonathan’s Law and the implementing regulations.

c. There will be no additional costs to local governments.

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

6. Paperwork: Compliance with the new laws entails an increase in paperwork. The new law requires that a written report on actions taken be provided for every incident that is subject to the new requirements. OMRDD has developed a new form to assist agencies in providing this report. Agencies are also required to provide redacted incident reports upon request as a part of the notification process. Further, agencies are required to provide redacted records and documents pertaining to allegations and investigations into abuse. The regulations add minimal new paperwork requirements to the statutory requirements by extending provisions related to the notification process to include advocates and correspondents, and extending requirements to encompass all services in the OMRDD system and incidents related to facility-based programs which occur in community settings with staff.

7. Duplication: The regulatory amendment does not duplicate existing state or federal requirements.

8. Alternatives: The law only requires the notification requirements to be made to a qualified person as defined in MHL 33.16. "Qualified persons" include only guardians, parents, spouse or adult child. OMRDD had considered limiting the applicability of the notification requirements to "qualified persons." However, OMRDD recognizes the valuable role played by siblings, family members, friends and others who are advocates and correspondents but who are not "qualified persons." OMRDD considers that individuals without a "qualified person" who have an advocate or correspondent should also be able to benefit from the additional notification process requirements. OMRDD consequently extended the new notification process requirements to include advocates/correspondents.

9. Federal standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: OMRDD filed similar emergency regulations effective on October 1 and December 30, 2007, and March 27, June 25, and September 23, 2008.

OMRDD intends to finalize regulations within the time frames provided for by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Effect on small business: These regulatory amendments will apply to providers of services that operate all programs certified, authorized or approved by OMRDD.

While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites (e.g. small residences) employ fewer than 100 employees at each site and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees would themselves be classified as small businesses.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: The new law required a variety of compliance activities. These activities include: providing telephone notice to a qualified person for certain incidents and allegations of abuse, offering a meeting with the agency's Chief Executive Officer or DDSO Director or a designee, and offering to provide a written report on actions taken. In addition, upon the request of a qualified person, documents and records pertaining to allegations and investigations of abuse must be released. All the above referenced documents must have names and identifying information redacted. The implementing regulations extend the requirements to advocates and correspondents, to non-facility based services and to situations when facility-based services are delivered at a location away from the facility. Agencies will need to make the changes needed for implementation in these situations where the regulatory requirements exceed the statutory requirements.

OMRDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, OMRDD has already developed a regulatory handbook on the implementation of 14 NYCRR Part 624. This handbook will be updated to reflect the new requirements outlined in these amendments.

3. Professional services: Modest additional professional services are required as a result of these amendments, due to the need for the involvement of legal professionals in redaction and interpretation of the regulations, to the extent that the regulatory requirements exceed the statutory requirements. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs:

There are no costs to local governments.

The amendments impose minor new compliance costs. There are minimal additional costs associated with implementation and compliance

with the law. In the areas noted above where the regulatory requirements exceed the statutory requirements, these modest compliance costs will be increased as notification is required in new situations and in additional service types.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: As stated in the Regulatory Impact Statement, the proposed regulation will have no fiscal effect on State or local governments, and minimal fiscal impact on regulated parties (including the state as a provider). Modest additional costs are necessary to the extent regulatory requirements exceed statutory requirements. OMRDD has reviewed and considered the approaches for minimizing economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. In order to minimize adverse economic impact, OMRDD has developed a standardized form for the report on actions taken. The use of this form will minimize staff resources devoted to completing the form, instead of each agency developing its own form or not using a form for this purpose.

7. Small business and local government participation: OMRDD convened a Jonathan's Law implementation workgroup which included representatives from provider associations. The group met on June 1, June 20 and November 7, 2007. Presentations were made to various groups including committees of the Cerebral Palsy Associations of New York State and the New York State Association of Residential and Community Agencies (NYSACRA). OMRDD staff presented at training sessions with hundreds of provider representatives hosted by NYSACRA on June 28 and July 20, 2007. OMRDD staff also presented at a training session hosted by the Long Island Alliance on August 23, 2007. In addition, OMRDD staff made a presentation at a meeting of the Conference of Local Mental Hygiene Directors on August 17, 2007. OMRDD also conducted a series of internal training sessions on October 3, October 11, October 18 and October 29, 2007. Informational mailings were sent to affected providers regarding the implementation of the new law on May 11 and May 15, 2007. A detailed informational mailing specifically discussing the emergency regulations was sent to providers and other interested parties on August 31, 2007. OMRDD also solicited comments from the Self-Advocacy Association, the Statewide Family Support Services Committee and the NYSARC Adult Services Committee. OMRDD informed all provider agencies, provider associations, and other interested parties (including parents, family members and individuals receiving services) of the October 1 and December 30, 2007 and March 27, June 25 and September 23, 2008 emergency regulations by mail. In addition, numerous questions and comments were received from voluntary providers, local government representatives and others at the events noted above and through individual contact.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). This finding is based on the fact that the proposed rule changes the way in which notifications are made regarding certain incidents and allegations of abuse. The proposed rule also provides greater access by qualified persons, including parents and legal guardians, to records and documents pertaining to allegations and investigations of abuse and mistreatment. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Job Impact Statement

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and/or employment opportunities and they may have a slightly positive impact on employment opportunities due to new features in the rule. This finding is based on the fact that the regulatory requirements exceed the statutory requirements of Jonathan's Law to require modest additional notifications and access to records as noted in the Regulatory Impact Statement. It is anticipated that providers will generally utilize existing staff to accomplish these tasks. In unusual circumstances, providers may find it necessary to hire or contract for additional staff.

Public Service Commission

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-09-08-00008-A

Filing Date: 2008-12-23

Effective Date: 2008-12-23

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

Action taken: On 12/10/08 the PSC adopted an order approving in part and denying in part Aqua New York, Inc.'s request for overall annual operating revenues to be increased by approximately \$284,342 or 57 percent and the increase be applied to the five Aqua New York Systems.

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

Subject: Water rates and charges.

Purpose: To approve consolidated tariffs, increase rates and implement a new rate design for Aqua New York, Inc.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving in part and denying in part Aqua New York, Inc.'s request for overall annual operating revenues to be increased by approximately \$284,342 or 57% and the increase be applied to the five Aqua New York Systems on an individual basis. The Commission denies the company's request for a consolidated rate design and approves the proposed rate structure to be implemented, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-W-0107SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-27-08-00005-A

Filing Date: 2008-12-17

Effective Date: 2008-12-17

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

Action taken: On December 10, 2008, the PSC adopted an order approving the petition of Barbizon 63/Condominium, to submeter electricity at 140 East 63rd Street, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Barbizon 63/Condominium, to submeter electricity at 140 East 63rd Street, New York, New York.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving a petition by Barbizon 63/Condominium, to submeter electricity at 140 East 63rd Street, New York, 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-0573SA1)

NOTICE OF ADOPTION

Rochester Gas and Electric Corporation's Economic Development Plan and Tariffs

I.D. No. PSC-39-08-00011-A

Filing Date: 2008-12-17

Effective Date: 2008-12-17

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

Action taken: On 12/10/08, the PSC adopted an order retaining Rochester Gas and Electric Corporation's existing ceiling of \$6.5 million in spending on non-rate economic development programs & an explanation of purpose of its program revision.

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

Subject: Rochester Gas and Electric Corporation's economic development plan and tariffs.

Purpose: To approve with conditions Rochester Gas and Electric Corporation's economic development plan and tariffs.

Substance of final rule: The Commission, on December 10, 2008, adopted an order retaining Rochester Gas and Electric Corporation's existing ceiling of \$6.5 million in spending on non-rate economic development programs until more detailed analysis of the need for a higher ceiling can be performed, and require the company to explain the purposes of its program revisions before implementing its Agriculture Capital Investment Pilot Program and expanding its Energy Efficiency Economic Development Assistance Program; and approve the Incremental Load Rate tariff, 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.

(02-E-0198SA14)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-40-08-00014-A

Filing Date: 2008-12-17

Effective Date: 2008-12-17

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

Action taken: On December 10, 2008, the PSC adopted an order approving the petition of Trump Parc East Condominium, to submeter electricity at 100 Central Park South, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Trump Parc East Condominium, to submeter electricity at 100 Central Park South, New York, New York.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving a petition by Trump Parc East Condominium, to submeter electricity at 100 Central Park South, New York, 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-1076SA1)

NOTICE OF ADOPTION

Approval of New Types of Gas Meters and Accessories

I.D. No. PSC-41-08-00011-A

Filing Date: 2008-12-17

Effective Date: 2008-12-17

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

Action taken: On 12/10/08, the PSC adopted an order approving the petition of National Fuel Gas Distribution Corporation for the use of the Sensus SONIX600 and SONIX880 Ultrasonic Meters for gas metering revenue applications for residential and commercial applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of gas meters and accessories.

Purpose: To approve the use of Sensus SONIX600 and SONIX880 Ultrasonic Meters for billing purposes in New York State.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the petition of National Fuel Gas Distribution Corporation for the use of the Sensus SONIX600 and SONIX880 Ultrasonic Meters for gas metering revenue applications for residential and commercial installations in New York State.

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-G-1086SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Gas Rate Filing

I.D. No. PSC-01-09-00018-P

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

Proposed Action: The Commission is considering a proposal filed by Corning Natural Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedules for Gas Service - P.S.C. Nos. 4, 5 (Hammondsport) and 6 (Bath).

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

Subject: Major gas rate filing.

Purpose: To consider a proposal to increase annual gas revenues by approximately \$1.7 million or 7.02 percent.

Public hearing(s) will be held at: 10:00 a.m., March 23, 2009 and continuing from day to day until completed* at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.state.ny.us) under Case 08-G-1137.

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: The Commission is considering a proposal filed by Corning Natural Gas Corporation (Corning) to increase its annual gas operating revenues by approximately \$1,689,911 or 7.02% (increase to delivery rates would be approximately 17.7%). The statutory suspension period for the proposed filing runs through August 19, 2009. Parties may negotiate a proposal for a rate plan to remain in effect for one or more years as an alternative to Corning's proposal. The Commission may adopt in whole or in part or reject terms set forth in any proposal.

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

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

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

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

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

(08-G-1137SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Con Edison's Proposed Modifications to P.S.C. No. 9 - Electricity

I.D. No. PSC-01-09-00014-P

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

Proposed Action: The Commission is considering whether to approve, deny, or modify, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to modify its tariff schedule for electricity service, P.S.C. No. 9 - Electricity.

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

Subject: Con Edison's proposed modifications to P.S.C. No. 9 - Electricity.

Purpose: Whether and to what extent the Commission should approve Con Edison's proposed modifications to P.S.C. No. 9 - Electricity.

Substance of proposed rule: The Commission is considering whether to approve, deny, or modify, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) dated December 17, 2008 to modify the charges, rules, and regulations contained in its tariff schedule for electricity service, P.S.C. No. 9 - Electricity, effective March 16, 2009. Con Edison is proposing changes to Rider U, its Distribution Load Relief Program, intended to maximize potential participation, improve verification of performance, establish different summer reservation payments based on verification methodology, and reorganize and clarify tariff provisions. The Commission will consider the proposed changes in the context of the Company's long range plans for development of demand response resources.

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

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

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

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

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

(08-E-1463SA1)

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

FCC Decision to Redefine Service Area of Citizens/Frontier**I.D. No.** PSC-01-09-00015-P

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

Proposed Action: The PSC is considering the Federal Communications Commission's (FCC) proposed redefinition of the service area of Citizens Telecommunications of New York d/b/a Frontier Communications (Citizens/Frontier).

Statutory authority: 47 USC section 214(e) and 47 CFR section 54.207(d)(1)

Subject: FCC decision to redefine service area of Citizens/Frontier.

Purpose: Review and consider FCC proposed redefinition of Citizens/Frontier service area.

Substance of proposed rule: The Public Service Commission is considering whether to agree or disagree, in whole or in part, with a Federal Communications Commission (FCC) decision that proposed redefining the service area of Citizens Telecommunications Company of New York d/b/a Frontier Communications (Citizens/Frontier). High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic Inc. New Hampshire ETC Designation Amendment, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008), amended December 15, 2008. In granting eligible telecommunications carrier status to New York RSA2 Cellular Partnership and St. Lawrence Seaway Cellular Partnership New York, the FCC proposed redefining the service area of Citizens/Frontier. Pursuant to 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(d)(1), the FCC's proposed redefinition of Citizens/Frontier's service area is subject to the review and final agreement of the Public Service Commission.

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

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

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

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

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

(08-C-1461SA1)

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

Mini Rate Filing**I.D. No.** PSC-01-09-00016-P

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

Proposed Action: The Commission is considering a proposed filing by The Fishers Island Electric Corporation 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 \$300,000 or 19 percent.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by The

Fishers Island Electric Corporation (Fishers Island) to increase its annual electric revenues by approximately \$300,000 or 19%. The proposed filing has an effective date of July 1, 2009. The Commission may approve, reject or modify, in whole or in part, Fishers Island'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.

(08-E-1458SA1)

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

Partnership for Distributed Generation Pilot Program**I.D. No.** PSC-01-09-00017-P

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

Proposed Action: The Commission is considering a proposal filed by National Fuel Gas Distribution Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service - P.S.C. No. 8.

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

Subject: Partnership for Distributed Generation pilot program.

Purpose: To extend the Partnership for Distributed Generation pilot program for another three years.

Substance of proposed rule: The Commission is considering a proposal filed by National Fuel Gas Distribution Corporation (National Fuel) to extend, for an additional three years, its Partnership for Distributed Generation pilot program. The program is scheduled to end March 31, 2009. The Commission may approve, reject or modify, in whole or in part, National Fuel'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.

(08-G-1483SA1)

Racing and Wagering Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Lottery Drawings

I.D. No. RWB-01-09-00002-P

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

Proposed Action: This is a consensus rule making to repeal Parts 5000 and 5001 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1); and Tax Law, section 1604(a)

Subject: State Lottery drawings.

Purpose: This rulemaking is designed to remove obsolete and statutorily nullified rules regarding the State Lottery.

Substance of proposed rule: PART 5000. LOTTERY DRAWINGS

- Section 5000.1 Time of drawings.
- Section 5000.2 Place of drawings.
- Section 5000.3 Manner of conducting drawings.
- Section 5000.4 Replacement of tickets not included in drawing.
- Section 5000.5 Information required of prizewinners.
- Section 5000.6 Drawing of substitute prizewinners.
- Section 5000.7 Unclaimed prize money.
- Section 5000.8 Inspection of operations and records.
- Section 5000.9 Summer, 1970 three dollar ticket lottery.
- Section 5000.10 Fall, 1970 three dollar ticket lottery.
- Section 5000.11 Additional three dollar ticket lotteries.
- Section 5000.12 Fifty-cent numbered ticket.
- Section 5000.13 Fifty-cent numbered ticket; prize amount.
- Section 5000.14 Fifty-cent numbered ticket; selection of winners.
- Section 5000.15 Fifty-cent numbered ticket; prizes awarded.
- Section 5000.16 Fifty-cent numbered ticket; payment of prizes.
- Section 5000.17 Fifty-cent numbered ticket; return of unsold tickets.
- Section 5000.18 Spring, 1971 two dollar ticket lottery.
- Section 5000.19 Special two dollar ticket lotteries.
- Section 5000.20 Fifty-cent numbered ticket weekly lottery.
- Section 5000.21 Fifty-cent numbered ticket weekly lottery; time of drawing.
- Section 5000.22 Fifty-cent numbered ticket weekly lottery; price and description of tickets.
- Section 5000.23 Fifty-cent numbered ticket weekly lottery; selection of winners.
- Section 5000.24 Fifty-cent numbered ticket weekly lottery; prizes awarded.
- Section 5000.25 Fifty-cent numbered ticket weekly lottery; payment of prizes.
- Section 5000.26 Fifty-cent numbered ticket weekly lottery; vendor compensation.
- Section 5000.27 Fifty-cent numbered ticket weekly lottery; provisions applicable.
- Section 5000.28 Special \$3 numbered ticket lottery.
- Section 5000.29 Special \$3 numbered ticket lottery; price and description of ticket.
- Section 5000.30 Special \$3 numbered ticket lottery; selection of winners.
- Section 5000.31 Special \$3 numbered ticket lottery; prizes awarded.
- Section 5000.32 Special \$3 numbered ticket lottery; payment of prizes.
- Section 5000.33 Special \$3 numbered ticket lottery; vendor compensation.
- Section 5000.34 Special \$3 numbered ticket lottery; provisions applicable.
- Section 5000.35 Special \$2 Winter numbered ticket lottery.
- Section 5000.36 Special \$2 Winter numbered ticket lottery; price and description of ticket.
- Section 5000.37 Special \$2 Winter numbered ticket lottery; selection of winners.
- Section 5000.38 Special \$2 Winter numbered ticket lottery; prizes awarded.
- Section 5000.39 Special \$2 Winter numbered ticket lottery; payment of prizes.
- Section 5000.40 Special \$2 Winter numbered ticket lottery; vendors.
- Section 5000.41 Special \$2 Winter numbered ticket lottery; provisions applicable.

Section 5000.42 Special \$3 Summer numbered ticket lottery.

Section 5000.43 Special \$3 Summer numbered ticket lottery; price and description of ticket.

Section 5000.44 Special \$3 Summer numbered ticket lottery; selection of winners.

Section 5000.45 Special \$3 Summer numbered ticket lottery; prizes awarded.

Section 5000.46 Special \$3 Summer numbered ticket lottery; payment of prizes.

Section 5000.47 Special \$3 Summer numbered ticket lottery; vendor compensation.

Section 5000.48 Special \$3 Summer numbered ticket lottery; provisions applicable.

Section 5000.49 Construction.

Section 5000.51 New chance fifty-cent numbered ticket lottery.

Section 5000.52 New chance fifty-cent numbered ticket lottery--eligible tickets.

Section 5000.53 New chance fifty-cent numbered ticket lottery--selection of winners.

Section 5000.54 New chance fifty-cent numbered ticket lottery--prizes awarded.

Section 5000.55 New chance fifty-cent numbered ticket lottery--payment of prizes.

Section 5000.56 New chance fifty-cent numbered ticket lottery--provisions applicable.

Section 5000.57 Construction.

Section 5000.58 Special 1974 \$3 numbered ticket lottery.

Section 5000.59 Special 1974 \$3 numbered ticket lottery--price and description of ticket.

Section 5000.60 Special 1974 \$3 numbered ticket lottery--selection of winners.

Section 5000.61 Special 1974 \$3 numbered ticket lottery--prizes awarded.

Section 5000.62 Special 1974 \$3 numbered ticket lottery--payment of prizes.

Section 5000.63 Special 1974 \$3 numbered ticket lottery--vendors.

Section 5000.64 Special 1974 \$3 numbered ticket lottery--provisions applicable.

Section 5000.65 Special 1974 \$3 numbered ticket lottery--absentee registrants.

Section 5000.66 Fifty-cent Colossus numbered ticket weekly lottery.

Section 5000.67 Two dollar fifty cent Independence Day (July 4th) numbered ticket lottery.

Section 5000.68 Fifty-cent Double Up numbered ticket weekly lottery.

PART 5001. GENERAL PROVISIONS

Section 5001.1 General applicability.

Section 5001.2 Ticket purchaser's responsibility.

Text of proposed rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.state.ny.us

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

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

Consensus Rule Making Determination

The Racing and Wagering Board has determined that no person is likely to object to the adoption of the rule as written because Parts 5000 and 5001 of 9E NYCRR are obsolete and were effectively nullified by statute in 1976.

When Parts 5000 and 5001 were originally incorporated into their current form in March 1974, the New York State Racing and Wagering Board was responsible for regulating the state lottery. With the adoption of Chapter 92 of the Laws of 1976, the responsibility for regulating the state lottery was transferred to the Division of Lottery of the effective March 31, 1976.

Since then, section 1604 of the Tax Law has expressly given the Lottery Division the authority to operate and administer the state lottery.

Subsequently, Section 2800.8 of 21 NYCRR was adopted on August 30, 1976 and states "The rules and regulations governing the operation of the State Lottery formerly conducted by the State Racing and Wagering Board and the predecessors of the State Racing and Wagering Board are not applicable to the operation of the State Lottery under article 34 of the Tax Law, as amended by chapter 92 of the Laws of 1976 and subsequently amended."

Because the Racing and Wagering Board no longer operates and administers the state lottery as per statute, no person is likely to object to the repeal of Parts 5000 and 5001, which pertain to lottery drawings.

Job Impact Statement

This rulemaking will not have an impact on jobs or employment opportunities. Under Section 201-a of the State Administrative Procedure

Act, "impact on jobs or employment opportunities" is measured in the two-year period commencing on the date the rule takes effect. The New York State Racing and Wagering Board has not operated or administered Part 5000 or Part 5001 of 9 NYCRR since March 1976. Practically speaking, the impact period of nullifying Parts 5000 and 5001 expired in March 1978, even though the obsolete rules remained on the books. There will be no impact on jobs because the rules have not been enforced since March 1976.

Department of State

EMERGENCY RULE MAKING

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

I.D. No. DOS-01-09-00003-E
Filing No. 1321
Filing Date: 2008-12-18
Effective Date: 2008-12-18

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

Action taken: Amendment of sections 1220.1 and 1224.1 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 377 and 378

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

Specific reasons underlying the finding of necessity: At its meeting held on December 17, 2008, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve public safety by clarifying requirements for electrical bonding of gas piping, clarifying requirements for protection of gas piping against physical damage, and adding new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST), which will increase protection against fires caused by lightning strikes in the vicinity of buildings equipped with CSST gas piping and fires caused by accidental punctures of CSST gas piping.

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

Purpose: To clarify requirements for electrical bonding of gas piping, and protection of gas piping against physical damage, and add new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST).

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

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

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

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

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

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

shield plates are required, and additional standards for protection of piping made of CSST; and

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 17, 2009.

Text of rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-6740, email: Joseph.Ball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

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

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

2. LEGISLATIVE OBJECTIVES.

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

3. NEEDS AND BENEFITS.

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

A report or study that served as a basis for this rule is *Corrugated Stainless Steel Tubing for Gas Distribution in Buildings and Concerns Over Lightning Strikes*, dated August 2007, published by The NAHB Research Center, Inc., which is summarized as follows: "... the primary issue is safeguarding against an electric potential in metallic piping. In the case of proximity lightning, a high voltage can be induced in metallic piping that may cause arcing; and for CSST there is concern that arcing may cause perforation of the CSST wall and therefore cause gas leakage. The fuel gas code, electric code, plumbing code, product standards, and manufacturer installation instructions have different methods of providing dissipation of electrical energy through techniques called bonding and grounding. Since the codes, product standards, and installation requirements are not harmonized, builders and contractors may find differing and possibly conflicting requirements. Generally, the local jurisdiction having authority and code official will rely upon the manufacturer's installation recommendations in lieu of other requirements." This report was used to determine the necessity for and benefits derived from this rule in the following manner: CSST manufacturers have always required that CSST systems be bonded to the electrical system in accordance with the local codes (i.e. FGCNYS, NFGC and the NEC). Based on this report, the bonding methods prescribed within these documents are minimum requirements and are designed to protect the consumer against ground-faults from the premise wiring system only. The intent of this rule is to harmonize the requirements for bonding of metallic piping while providing protection from proximity lightning strikes.

4. COSTS.

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

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

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

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

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

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

5. PAPERWORK.

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

6. LOCAL GOVERNMENT MANDATES.

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

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

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

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

7. DUPLICATION.

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

8. ALTERNATIVES.

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

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

9. FEDERAL STANDARDS.

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

10. COMPLIANCE SCHEDULE.

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

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

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

Since this rule amends provisions in the Uniform Code, each local government that is responsible for administering and enforcing the

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

2. COMPLIANCE REQUIREMENTS:

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS.

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

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in *Building New York*, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. The meetings included the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee members, with participation from several CSST manufacturers and local government representatives. The Department of State will publish a notice of the emergency adoption of this rule in a future edition of *Building New York*. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

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

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

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

3. COMPLIANCE COSTS.

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

4. MINIMIZING ADVERSE IMPACT.

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

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in *Building New York*, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. The meetings included the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee members, with participation from several CSST manufacturers and local government representatives. The Department of State will publish a notice of the emergency adoption of this rule in a future edition of *Building New York*. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

Job Impact Statement

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

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

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

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations (IMEs)

I.D. No. WCB-01-09-00001-E

Filing No. 1318

Filing Date: 2008-12-17

Effective Date: 2008-12-17

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: Decisions of Board Panels have held the current regulation requires reports of independent medical examinations (IMEs) be received by the Board within ten calendar days of the exam. This is not enough time to timely file preventing proper defense of claim.

Subject: Filing written reports of Independent Medical Examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the Board and furnished to all others.

Text of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 16, 2009.

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

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists

who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.