

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 Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Child Support Requirements for Low Income Child Care Recipients

I.D. No. CFS-30-09-00007-P

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

Proposed Action: Amendment of section 415.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 410 and title 5-C

Subject: Child Support Requirements for Low Income Child Care Recipients.

Purpose: To eliminate the requirement that recipients of low income child care subsidies pursue child support.

Text of proposed rule: Subdivision (c) of section 415.3 is repealed and subdivisions (d), (e), (f) and (g) are re-lettered to read (c), (d), (e) and (f) respectively.

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office

of Children and Family Services (OCFS) to establish rules and regulations to carry out its duties pursuant to the provisions of the SSL.

Section 410 of the SSL authorizes social services districts to provide subsidized child care services to families determined eligible in accordance with criteria established by OCFS. This section only governs child care services provided under the Title XX Social Service Block Grant and those provided as preventive services and child protective services under certain circumstances. All other child care services are governed by Title 5-C of the SSL.

Title 5-C (§ 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant (NYSCCBG). Section 410-u of the SSL requires OCFS to establish a NYSCCBG comprised of all the federal funds appropriated for child care under Title IV-A of the federal Social Security Act and under the federal Child Care and Development Fund, any additional funds transferred to the NYSCCBG by the State from the federal Temporary Assistance to Needy Families block grant, and any State funds appropriated for child care services. Section 410-w of the SSL prescribes the families for whom social services districts may use allocated NYSCCBG funds to provide child care assistance. The section sets forth which families must be guaranteed child care services, which families must be served as long as funds are available, and which families a social services district may elect to serve in accordance with criteria established by OCFS.

2. Legislative objectives:

The regulations support the legislative objectives underlying Section 410 and Title 5-C of the SSL to provide child care services to low-income families when necessary to promote self-sufficiency and to protect children. They also support the legislative objective to make access to child care services easier for families and to reduce local administrative burdens.

3. Needs and benefits:

A compelling argument has been made that an unknown number of low income families, which do not receive public assistance, may not be taking advantage of the State's child care subsidy program due to the requirement to pursue child support.

For many custodial parents, especially those who have been in domestic violence situations with the non-custodial parent, seeking child support is an experience they forgo for fear of the potential repercussions. In addition, many custodial parents work in low paying jobs without the benefit of paid time off. These parents experience the possibility of lost wages or potential termination of employment for taking time off to go to Family Court to apply for child support or to seek modification or enforcement of child support orders. Other custodial parents have informal arrangements with their children's non-custodial parents and feel it would be counterproductive to take the time and effort to formalize those requirements. Furthermore, if a non-custodial parent is in the United States legally but is involved with immigration proceedings, the non-custodial parent may be concerned that a Family Court appearance may jeopardize his or her ability to stay in the country.

Low-income parents that choose not to seek child care subsidies because of the child support requirement may place their children in unsafe, unregulated care. For low income children who could benefit emotionally and educationally from enrollment in an early childhood program being denied access to subsidized child care is an unfortunate potentially long-term consequence of the parent's decision not to seek child support.

Additionally, implementation of the requirement to pursue child support has added to the workload for social services districts. Districts must track compliance with the requirement and recalculate child care benefit amounts when there is a change in the payment of child support or the share of child care costs made by the non-custodial parent. Repeal of this requirement would ease an administrative burden on districts.

Implementation of the existing child support requirement also places administrative and financial burdens on child care providers serving low-income subsidy recipients. The child care providers must obtain the child care portion of the child support collections from the non-custodial or

custodial parents. If those payments are delayed or not paid for a particular family, then the child care provider must decide between continuing to provide care to the family until the payments are made or the applicable social services district adjusts the subsidy payments to reflect the non-payments or requiring the family to leave the child care program. Repeal of this requirement also would ease this administrative burden on child care providers serving families receiving low income child care subsidies.

For all of these reasons, OCFS believes it is in the best interest of low income families in New York that the child support requirement be eliminated.

4. Costs:

The Office of Temporary and Disability Assistance (OTDA) estimates the amount of child support collections in 2007 that applied to the costs of child care for those families who have never received public assistance at a little over \$480,000 statewide. As these collections are from existing child support orders, OCFS does not expect any significant loss in these child care collections or in child support income collections to result from the repeal of the child support requirement for low-income child care subsidy recipients. However, there may be a small annual adverse impact on the number of low income child care subsidies some social services districts are able to fund or the amount of funding some social services districts choose to contribute towards low-income child care subsidies if some low income child care recipients already in receipt of child support decide to forgo such support in the future or if some new families applying for low income child care subsidies chose not to apply for child support services. This potential impact would result from the districts having to make higher child care subsidy payments to those families due to the lack of child care collections from child support to off set the districts' child care costs or from lower family fees for child care resulting from some families' incomes being lower than if they were receiving child support income. However, local social services districts have the ability to manage any changes in child care subsidy costs within the State and federal funds made available to them for child care services.

State reimbursement for child care services is made from the State and/or federal funds allocated to the NYSCCBG and is limited on an annual basis to each local district's NYSCCBG allocation for that year. Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 100 percent of the costs of providing child care services to eligible low income families that are not in receipt of public assistance up to each district's NYSCCBG allocation. Under the State Budget for SFY 2007-2008, each social services district received its allocations of \$713,220,629 in federal and State NYSCCBG funds. While this allocation is the primary resource available for additional child care subsidies that may result from the implementation of this regulatory change, social services districts also have the option to transfer a portion of their Flexible Fund for Family Services (FFFS) allocations to the NYSCCBG to use for the child care subsidy program.

Administrative costs to OCFS in implementing the repeal of this regulation are expected to be negligible and are manageable within the State's NYSCCBG budget.

5. Local government mandates:

The repeal of this regulation removes a local government mandate.

6. Paperwork:

Social services districts may have to modify local forms that include the requirement for the parent/caretaker to actively pursue child support.

7. Duplication:

There are no rules, or other legal requirements that will duplicate, overlap or conflict with the repeal of this regulation.

8. Alternatives:

As alternatives, OCFS considered maintaining the existing requirement; removing the requirement to return to court to modify the order to add child care costs to the order; and limiting the requirement to pursue child support for only that child needing child care services in the family unit. OCFS believes these alternative approaches do not adequately promote access to child care subsidies for vulnerable low income families in New York State.

9. Federal standards:

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

10. Compliance schedule:

Social services districts may need 30 days to modify any local forms or publications which discuss the requirement on the parent/caretaker to actively pursue child support. Social services districts may need more than 30 days to determine the impact of this change on their caseload. Some districts may wish to modify their Child and Family Services plan to revise their priorities for child care funding.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulation will affect all 58 social services districts in the State and those child care programs operated by small businesses that

serve low-income child care recipients. Some social services districts have suggested this requirement acts as a barrier to families applying for low-income child care subsidies and, thereby, assists the districts in managing the number of families served with their limited child care subsidy dollars. Should the proposed regulation result in a significant increase in the number of families applying for low-income subsidized child care services in some social services districts, those districts may create waiting lists for such services or revise the child care portion of their Child and Family Services Plans to establish or change their child care priorities and/or the income level for any child care set asides.

We would encourage local social services districts to utilize fraud detection methods to ensure that applicants for child care subsidies report accurate household composition information.

Implementation of the existing requirement to pursue child support has added to the workload for social services districts and child care providers. Districts must track recipient's compliance with the requirement and recalculate child care benefit amounts when there is a change in the payment of child support or the share of child care costs made by the non-custodial parents. The child care providers must obtain the child care portion of the child support collections from the non-custodial or custodial parents. If those payments are delayed or not paid for a particular family, then the child care provider must decide between continuing to provide care to the family until the payments are made or the applicable social services district adjusts the subsidy payments to reflect the non-payments or requiring the family to leave the child care program. The elimination of the child support requirement will ease these administrative burdens.

2. Compliance Requirement:

There will be no impact on reporting or recordkeeping requirements for social services districts or child care providers imposed by the rule. The rule will eliminate the requirement that local social services districts track recipients' compliance with the existing child support requirements. Some districts will need to modify local forms or publications that refer to the requirement to actively pursue child support.

3. Professional Services:

No professional services will be needed to comply with this change in rule.

4. Compliance Costs:

The Office of Temporary and Disability Assistance (OTDA) estimates the amount of child support collections in 2007 that applied to the costs of child care for those families who have never received public assistance at a little over \$480,000 statewide. As these collections are from existing child support orders, OCFS does not expect any significant loss in these child care collections or in child support income collections to result from the repeal of the child support requirement for low-income child care subsidy recipients. However, there may be a small annual adverse impact on the number of low-income child care subsidies some social services districts are able to fund or the amount of funding some social services districts choose to contribute towards low-income child care subsidies if some low-income child care recipients already in receipt of child support decide to forgo such support in the future or if some new families applying for low-income child care subsidies chose not to apply for child support services. This potential impact would result from the districts having to make higher child care subsidies payments to those families due to the lack of child care collections from child support to off set the districts' child care costs or from lower family fees for child care resulting from some families' incomes being lower than if they were receiving child support income. However, local social services districts have the ability to manage any changes in child care subsidy costs within the State and federal funds made available to them for child care services.

State reimbursement for child care services is made from the State and/or federal funds allocated to the NYSCCBG and is limited on an annual basis to each local district's NYSCCBG allocation for that year. Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 100 percent of the costs of providing child care services to eligible low income families that are not in receipt of public assistance up to each district's NYSCCBG allocation. Under the State Budget for SFY 2007-2008, each social services district received its allocations of \$713,220,629 in federal and State NYSCCBG funds. While this allocation is the primary resource available for additional child care subsidies that may result from the implementation of this regulatory change, social services districts also have the option to transfer a portion of their Flexible Fund for Family Services (FFFS) allocations to the NYSCCBG to use for the child care subsidy program.

Administrative costs to OCFS in implementing the repeal of this regulation are expected to be negligible and are management within the State's NYSCCBG budget.

5. Economic and Technological Feasibility:

This change in rule will be both economically and technologically feasible. However, some districts that estimate they will have insufficient funds to serve all eligible families may institute a waiting list for families

that seek funding, and/or limit intake to families with incomes at a level below 200% of poverty.

6. Minimizing Adverse Impact:

Repeal of this requirement would ease an administrative burden on social services districts and child care programs operated by small businesses for the reasons discussed in the first section of this statement.

In addition, OCFS, in conjunction with OTDA, will develop public information materials to be used by child care providers to inform parents of the benefits of child support. The materials will also explain the child support services available through the social services districts and the process to obtain child support for individuals who wish to pursue child support on their own behalf. OCFS will also increase its audit work in the child care subsidy program so that controls are in place to identify potential fraud.

7. Small Business and Local Government Participation:

OCFS and OTDA held a roundtable discussion in June 2007 with advocates and local district commissioners to help inform our thinking about this requirement. In addition, issues related to the child support requirement have been discussed with social services districts and advocates in a number of forums over the last six months. Further, a survey was sent to the local districts requesting feedback and data on the child support requirement.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The regulation will affect the 44 social services districts located in rural areas of the State and those child care providers located in those areas which are operated by small businesses that serve low income child care recipients.

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

There will be no significant impact on reporting or recordkeeping requirements for social services districts or child care providers imposed by the rule. The rule will eliminate the requirement that local social services districts track recipients' compliance with the existing child support requirements. Some social services districts will need to modify local forms or publications that refer to the requirement to actively pursue child support. No professional services will be needed to comply with this change in rule.

3. Costs:

The Office of Temporary and Disability Assistance (OTDA) estimates the amount of child support collections in 2007 that applied to the costs of child care for those families who have never received public assistance at a little over \$480,000 statewide. As these collections are from existing child support orders, OCFS does not expect any significant loss in these child care collections or in child support income collections to result from the repeal of the child support requirement for low income child care subsidy recipients. However, there may be a small annual adverse impact on the number of low income child care recipients who receive social services districts are able to fund or the amount of funding some social services districts choose to contribute towards low income child care subsidies if some low income child care recipients already in receipt of child support decide to forgo such support in the future or if some new families applying for low income child care subsidies chose not to apply for child support services. This potential impact would result from the districts having to make higher child care subsidies payments to those families due to the lack of child care collections from child support to offset the districts' child care costs or from lower family fees for child care resulting from some families' incomes being lower than if they were receiving child support income. However, local social services districts have the ability to manage any changes in child care subsidy costs within the State and federal funds made available to them for child care services.

State reimbursement for child care services is made from the State and/or federal funds allocated to the NYSCCBG and is limited on an annual basis to each local district's NYSCCBG allocation for that year. Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 100 percent of the costs of providing child care services to eligible low income families that are not in receipt of public assistance up to each district's NYSCCBG allocation. Under the State Budget for SFY 2007-2008, each social services district received its allocations of \$713,220,629 in federal and State NYSCCBG funds. While this allocation is the primary resource available for additional child care subsidies that may result from the implementation of this regulatory change, social services districts also have the option to transfer a portion of their Flexible Fund for Family Services (FFFS) allocations to the NYSCCBG to use for the child care subsidy program.

Administrative costs to OCFS in implementing the repeal of this regulation are expected to be negligible and are manageable within the State's NYSCCBG budget.

4. Minimizing Adverse Impact:

Implementation of the existing requirement to pursue child support has added to the workload for social services districts and child care providers.

Districts must track recipient's compliance with the requirement and recalculate child care benefit amounts when there is a change in the payment of child support or the share of child care costs made by the non-custodial parents. The child care providers must obtain the child care portion of the child support collections from the non-custodial or custodial parents. If those payments are delayed or not paid for a particular family, then the child care provider must decide between continuing to provide care to the family until the payments are made or the applicable social services district adjusts the subsidy payments to reflect the non-payments or requiring the family to leave the child care program. The elimination of the child support requirement will ease these administrative burdens.

In addition, OCFS, in conjunction with OTDA, will develop public information materials to be used by child care providers to inform parents of the benefits of child support. The materials will also explain the child support services available through the social services districts and the process to obtain child support for individuals who wish to pursue child care on their own behalf.

5. Rural Area Participation:

OCFS and OTDA held a roundtable discussion in June 2007 with advocates and local district commissioners to help inform our thinking about this requirement. Four social services commissioners from districts in rural areas attended the roundtable. In addition, issues related to the child support requirement have been discussed with social services districts and advocates in a number of forums over the last six months. Further, a survey was sent to the local districts requesting feedback and data on the child support requirement.

Job Impact Statement

1. Nature of Impact:

The proposed rule will increase the number of individuals applying for and eligible for a low income child care subsidies. Many of these individuals will be those who are seeking employment or are already employed. Some of them may be better able to take advantage of job opportunities if they are able to receive child care subsidies without having to pursue child support.

2. Categories and Numbers Affected:

The number of families that may be affected by the proposed rule is unknown. Approximately 37,000 families currently receive low-income child care subsidies each month under the New York State Child Care Block Grant. Most of these families already are pursuing child support under the existing requirement. Similarly, any new families seeking low-income child care subsidies that previously received public assistance will already have met the requirement to actively pursue child support because it is a condition of receiving public assistance.

3. Regions of Adverse Impact:

There are no regions where the rule would have a disproportionate adverse impact on jobs or employment opportunities.

4. Minimizing Adverse Impact:

Not applicable.

5. Self-employment Opportunities:

No measurable impact on opportunities for self-employment is expected.

Department of Correctional Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standards of Inmate Behavior, Inmate Correspondence Program and Privileged Correspondence

I.D. No. COR-30-09-00018-EP

Filing No. 819

Filing Date: 2009-07-14

Effective Date: 2009-07-14

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

Proposed Action: Amendment of sections 720.3(c), (e), 721.2(b)(4), (5), 721.3(a)(2); and addition of sections 720.4(d)(7), 721.2(b)(6), 270.2(B)(8)(iv) and (B)(14)(xx) to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. This emergency rule is in response to a scheme whereby inmates have fraudulently utilized provisions of the Uniform Commercial Code (UCC) to file baseless liens with the Secretary of State against Department employees and others. Under this scheme, an inmate asserts a "copyright" over his or her name; files a UCC-1 financing statement that asserts a claim over the inmates "property", which in this case is him/herself. The inmate then makes demands to be compensated for the unauthorized use of his or her property (i.e., every time an officer writes down the "copyrighted" name) or for the illegal holding of his or her property, which in this case is the inmate him/herself. When the demands are ignored, the inmate claims a right to assert a UCC lien against the staff member to whom the demand was made. This has the potential to have a severe detrimental effect on the individual's credit or to cause them significant financial hardship.

Since the adoption of the original emergency rule, the Department has discovered prohibited materials in the possession of at least forty (40) inmates at nineteen (19) of the Department's facilities. In each case the documents were consistent with the bogus filings associated with the "Redemptive Process" scheme that may lead to the filing of a false lien.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the process and procedure with respect to the processing of correspondence from the Secretary of State, Department of State, Corporation Division or Uniform Commercial Code of any state and the processing of outgoing correspondence to such entities; to provide notice that unauthorized Uniform Commercial Code financing statements and related materials and materials pertaining to the "Redemptive Process," "Acceptance for Value" presentations or documents indicating copyright of a name are prohibited within incoming mail and of the applicable procedure when such materials are found; to prohibit an inmate from filing any document which purports to create a lien without authorization; and to prohibit the unauthorized possession of Uniform Commercial Code financing statements and associated documents and materials pertaining to a scheme involving an inmate's "strawman," the "Redemptive Process," "Acceptance for Value" presentations or documents indicating copyright of a name by an inmate.

Subject: Standards of Inmate Behavior, Inmate Correspondence Program and Privileged Correspondence.

Purpose: To revise correspondence procedures and inmate rules with respect to the processing/possession of UCC related documents.

Text of emergency/proposed rule: Amend section 720.3(c).

(c) Except for oversize envelopes and parcels, [and] inmate-to-inmate correspondence, and *correspondence specified in § 721.3(a)(2) of this Chapter*, outgoing correspondence may be sealed by the inmate.

Amend section 720.3(e).

(e) Outgoing correspondence, *except as specified in § 721.3(a)(2) of this Chapter*, shall not be opened, inspected, or read without express written authorization from the facility superintendent.

Add new section 720.4(d)(7).

(7) *Uniform Commercial Code (UCC) Financing Statements. Any UCC Article 9 form, including but not limited to any financing statement (UCC1, UCC1Ad, UCC1AP, UCC3, UCC3Ad, UCC3AP, UCC1CAd), correction statement (UCC5) or information request (UCC11), whether printed, copied, typed or hand written, or any document concerning a scheme involving an inmate's "strawman," "House Joint Resolution 192 of 1933," the "Redemptive Process," "Acceptance for Value," or document indicating copyright of an inmate's name is prohibited absent prior written authorization from the superintendent. All such material and any other material contained within the correspondence shall be examined by the superintendent in consultation with Counsel's Office and may be withheld for investigation. An inmate may request authorization from the superintendent to receive specific materials by providing the superintendent with specific, legitimate legal reasons why such materials are required.*

Amend sections 721.2(b)(4) and 721.2(b)(5) and adds new subdivision (6) to section 721.2(b) as follows:

(4) mail received from the State Education Department, excluding materials sent to inmates marked "legal mail" by the New York State Library's Prisoner Services Project; [and]

(5) mail received from any county or local tax assessor or clerk, except for a clerk of a court[.]; and

(6) *mail received from the secretary of state, department of state, corporation division or uniform commercial code unit of any state.*

Amend section 721.3(a)(2).

(2) Outgoing privileged correspondence may be sealed by the inmate, and such correspondence shall not be opened, inspected, or read without express written authorization from the facility superintendent as specified in subdivision (c) of this section. *Notwithstanding the foregoing or any*

other provision of this Chapter, outgoing mail to the secretary of state, department of state, corporation division or uniform commercial code unit of any state shall be submitted by the inmate unsealed and is subject to inspection.

Add new section 270.2(B)(8)(iv).

iv 107.21 *An inmate shall not file or record any document or instrument of any description which purports to create a lien or record a security interest of any kind against the person or property of any officer or employee of the Department, the State of New York or the United States absent prior written authorization from the superintendent or a court order authorizing such filing.* II, III

Add new section 270.2(B)(14)(xx).

xx 113.30 *An inmate shall not possess any Uniform Commercial Code (UCC) Article 9 form, including but not limited to any financing statement (UCC1, UCC1Ad, UCC1AP, UCC3, UCC3Ad, UCC3AP, UCC1CAd), correction statement (UCC5) or information request (UCC11), whether printed, copied, typed or hand written, or any document concerning a scheme involving an inmate's "strawman," "House Joint Resolution 192 of 1933," the "Redemptive Process," "Acceptance for Value" presentations or document indicating copyright or attempted copyright of an inmate's name absent prior written authorization from the superintendent.* II, III

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 October 11, 2009.

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

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

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

Regulatory Impact Statement

Statutory Authority

Section 112 of Correction Law grants the Commissioner the management and control of the correctional facilities in the department. He shall make such rules and regulations, not in conflict with the statutes of the state. Section 137(2) of the Correction Law requires the Commissioner to provide for such measures as he may deem necessary or appropriate for the safety, security and control of correctional facilities and the maintenance of order therein. Section 70(2) of the Correction Law provides in part that correctional facilities shall be used for the purpose of providing places of confinement of persons in the custody of the Department, that such use shall be suited to the objective of assisting sentenced persons to live as law abiding citizens, and that in establishing and maintaining Department facilities, the safety and security of the community must be considered. Section 18(2) of the Correction Law grants the Superintendent the authority to provide for the supervision and management of his or her correctional facility subject to the rules and statutory powers of the Commissioner, or rules approved by the Commissioner.

Legislative Objective

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to promulgate such rules and regulations in the best interest of the public safety, in addition to the safe secure and orderly operation of the correctional facility.

Needs and Benefits

This action is in response to a scheme whereby inmates have fraudulently utilized Article 9 of the Uniform Commercial Code (UCC) to file baseless liens with the Secretary of State against Department employees,

employees of state and local criminal justice agencies, judges and employees of the Office of the Attorney General. Under this scheme, an inmate asserts a "copyright" over his or her name; files a UCC-1 financing statement that asserts a claim over the inmate's "property", which in this case is him/herself. The inmate then makes demands to be compensated for the unauthorized use of his or her property (i.e., every time an officer writes down the "copyrighted" name) or for the illegal holding of his or her property, which in this case is the inmate him/herself. When the demands are ignored, the inmate claims a right to assert a UCC lien against the staff member to whom the demand was made.

The filing of such a baseless lien has the potential to have a severe detrimental effect on the individual's credit or to cause them significant financial hardship. This response is narrowly tailored to address this significant problem while providing a mechanism for an inmate with a legitimate legal need for such documents to request and obtain authorization to process such documents. Restriction from unauthorized possession of blank UCC Article 9 forms is intended to address the concern that an inmate may complete such forms and file false liens with the aid of third parties. This proposed body of rules is similar to rules in place in other jurisdictions such as Pennsylvania and Michigan.

The Department recognizes that although "imprisonment does not automatically deprive a prisoner of certain important constitutional protections, including those of the First Amendment, ... the Constitution sometimes permits greater restriction of such rights in a prison than it would elsewhere." *Beard v. Banks*, 548 U.S. 521, 528 (2006). The Second Circuit has noted that "under the First Amendment, prisoners have a right to the free flow of incoming and outgoing mail." *Johnson v. Goord*, 445 F.3d 532, 534 (2d Cir.2006), citing *Davis v. Goord*, 320 F.3d 346, 351 (2d Cir.2003). These and other decisions provide that a prisoner's right to receive and send mail may be regulated so long as the regulation is reasonably related to legitimate penological interests.

It is also noted that in *Lewis v. Casey*, the United States Supreme Court recognized that the right of access to the courts "does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Lewis v. Casey*, 518 U.S. 343, 355 (1996). The provisions of UCC Article 9 are generally inapplicable to such issues, thus this proposed rule does not impair an inmate from challenging his or her sentence, conviction and conditions of confinement.

The Department seeks to amend the process and procedure with respect to the processing of correspondence from the Secretary of State, Department of State, Corporation Division or Uniform Commercial Code of any state and the processing of outgoing correspondence to such entities; to provide notice that unauthorized Uniform Commercial Code financing statements and related materials and materials pertaining to the "Redemptive Process," "Acceptance for Value" presentments or documents indicating copyright of a name are prohibited within incoming mail and of the applicable procedure when such materials are found; to prohibit an inmate from filing any document which purports to create a lien without authorization; and to prohibit the unauthorized possession of Uniform Commercial Code financing statements and associated documents and materials pertaining to the "Redemptive Process," "Acceptance for Value" presentments or documents indicating copyright of a name by an inmate.

Costs

- To agency, the state and local governments: None.
- Costs to private regulated parties: None.
- This cost analysis is based upon the fact that this proposal merely amends the policy and procedure for handling inmate mail.

Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments. Correctional Facilities are State funded and operated.

Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

The Department crafted this rule as narrowly as possible. The Department previously enacted a broader rule declaring all unauthorized UCC financing statements and associated documents contraband. This rule specifically applies to UCC Article 9 materials and documents in connection with the "strawman" and "Redemptive Process" scheme. The

Department of Correctional Services has communicated with the Department of State to inquire about any less restrictive measures and have been advised there are none.

Federal Standards

There are no applicable minimum standards of the Federal government. Compliance Schedule

A version of this rule has been filed as an emergency. Because this more narrowly tailored rule is internal to the Department, compliance with the proposed rules will be achieved immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal is clarifying the Department's procedures for the processing of privileged correspondence, it is providing instruction regarding the handling of regular correspondence that is determined to be contraband and is adding new rules to the Standards of Inmate Behavior.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal is clarifying the Department's procedures for the processing of privileged correspondence, it is providing instruction regarding the handling of regular correspondence that is determined to be contraband and is adding a new rule to the Standards of Inmate Behavior.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal is clarifying the Department's procedures for the processing of privileged correspondence, it is providing instruction regarding the handling of regular correspondence that is determined to be contraband and is adding new rules to the Standards of Inmate Behavior.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

"Release of Information to Inmate Families and the News Media", "Public Contacts of Institutions and Employees"

I.D. No. COR-30-09-00002-P

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

Proposed Action: Repeal of sections 51.15(k), 51.18 and 51.19 and amendment of sections 8.3, 51.1, 51.2, 51.3, 51.4, 51.5, 51.7, 51.8, 51.12, 51.14, 51.15, 51.16 and 51.20 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112; Judiciary Law, sections 4, 255 and 255-b

Subject: "Release of Information to Inmate Families and the News Media", "Public Contacts of Institutions and Employees".

Purpose: To update terminology, correct minor grammatical errors and ensure consistency with security and confidentiality concerns.

Text of proposed rule: The Department of Correctional Services repeals and reserves sections 51.15(k), 51.18 and 51.19 of 7 NYCRR and amends sections 8.3, 51.1, 51.2, 51.3, 51.4, 51.5, 51.7, 51.8, 51.12, 51.14, 51.15, 51.16 and 51.20 of 7 NYCRR as follows:

Section 8.3. News media.

Upon request by the news media, the following information from an inmate record shall be made available *unless otherwise prohibited by statute or regulation*: name, [age,]date of birth, birthplace, [city] place of previous residence, physical description, commitment information, present facility in which housed, departmental actions regarding confinement and release, and when related to a newsworthy event, institutional work assignments, general state of health, and an occurrence of death. Other information shall only be released to the news media[in] at the discretion of the commissioner or his designee, giving consideration (a) to safety and security, (b) to the protection of the privacy of the inmate and his right to a fair trial or retrial, and (c) to the public's right to know, unless otherwise provided by statute or regulation. News media shall make requests for information to the *of- fice* [director] of public information.[, or to the superintendent of the appropriate correctional facility who shall consult with the director of public information prior to responding to the request.]

Section 51.1. Divulgence of information.

Information relative to institutional or departmental affairs and individual inmates must be authorized and given out by the commissioner or his or her designee, [except that a warden may release items of current news,]provided the divulgence of such information does not tend to defeat the ends of justice or adversely affect the interests of the department. Inquiries addressed by persons outside the department to any employee concerning inmates individually or in general, or offering employment to an inmate, or inquiring about employment in the institution, or for any other information about the institution or the department, shall not be answered by the employee but referred to the superintendent [warden].

Section 51.2. Requests to photograph institutions.

Requests received by superintendents [wardens]for permission to take photographs or make pictures, either still or motion, of any correctional facility [institution] or of any of the activities therein, shall be forwarded to the commissioner or his or her designee. [When transmitting such requests, the warden shall attach his recommendation for approval or disapproval.] Such requests will not be approved where the pictures or photographs are to be used for commercial purposes unrelated to the gathering of news.

Section 51.3. Taking nonemployees to institution departments.

No employee shall be permitted to escort any person not employed by the department to any of the institutional departments without first being directed by, or having obtained the approval of, the superintendent [warden or principal keeper].

Section 51.4. Control of visitors by employee.

An employee assigned to conduct visitors through the correctional facility [institution] shall require them to refrain from giving anything to or receiving anything from inmates; from loud talking or boisterous conduct; and from loitering along the way or separating themselves from the group or the employee.

Section 51.5. Restrictions on visitors.

Persons visiting institutions shall not be permitted to know the identity of inmates or their past histories; nor to communicate with them; nor shall they be permitted to handle tools, working materials, or other similar objects or appurtenances. Exception to this rule shall be taken when visitors are on official business, or have permission of the commissioner to proceed to the contrary. Unless the exception to this rule applies, visitors shall be taken only to such places as may be designated by the superintendent [warden].

Section 51.7. Entertainment fees prohibited.

No fee shall be collected, either directly or indirectly, for admission of the public or inmates to athletic games and events, theatricals, or any other type of entertainment held in the institutions. Approval of the commissioner or his or her designee must be obtained by the superintendent [warden] before the public may be admitted [without charge]to any program, exhibit or other activity of an institution.

Section 51.8. Superintendent [Warden] may accept gifts and donations.

With the approval of the commissioner, T[t]he superintendent [warden] may accept gifts or donations offered to the department or institutions by individuals or legitimate organizations interested in the welfare and improvement of inmates, if the nature of such gifts or donations makes it possible to use them for the general welfare of the inmates, and if such donations do not in any manner obligate the institution or the department to the donor.

Section 51.12. Information sources.

Superintendents of correctional facilities may at times have responsibility for release of information and response to inquiries from news media representatives pertaining to their respective facilities at the direction of the office of public information. Information pertaining to overall departmental operations, policies, procedures, etc., will be released or responded to through the office of public information [affairs] in Albany, New York.

Section 51.14. Release of inmate data.

The release of records or information pertaining to individual inmates or former inmates shall be provided to the media (i.e.; a rep-

resentative of a newspaper, periodical, news service, or radio and television network or station) [press only]in accordance with section 8.3 of this Title. No other information shall be provided to the media [press] except as provided for in the above section. [In cases involving inmates and former inmates facing possible prosecution on new charges, details of past criminal history and other information which might impair their rights to a fair trial will not be released to the press.]

Section 51.15. Media [Press]interviews.

(a) Inmates confined in a facility under the Department of Correctional Services of the State of New York have a limited constitutional right to be visited and interviewed by representatives of the news media.

(b) Representatives of the news media have a qualified right to visit and interview an inmate confined in a correctional facility who wishes to be visited and/or interviewed.

(c) *Inmate Eligibility.* [The superintendent may permit a representative of a newspaper entitled to second class mailing privileges, news magazine or other publication which would be entitled to a place on the department's approved magazine list, news service, or radio and television network or station, to interview an inmate in his custody.]

(1) *Inmates who are in general confinement status may, at the discretion of the commissioner, receive face-to-face media interviews.*

(2) *Inmates who are in administrative segregation status may, at the discretion of the commissioner, substitute one media interview for their one non-legal visit per week.*

(3) *Inmates in pre-hearing confinement status or serving a disciplinary confinement sanction, which includes disciplinary status special housing units and keeplock, will not be approved for media interviews regardless of where they are housed.*

(d) Such interviews shall be held at a time, place and under such conditions as prescribed by the superintendent of the facility and convenient to the operation and administration of the facility consistent with the safety and security thereof.

(e) Arrangements for specific, individual interviews with inmates are to be made through the office of public information. [respective superintendents. The nature of the requested interview will be made known to the superintendent.] Inmates will be advised of the request for interview by the respective media source in writing and if the inmate [individual] approves, such interview may be granted.

(f) Inmates whom a reporter desires to interview must be advised of such request for an interview. Both the reporter seeking the interview and the inmate sought to be interviewed may write[shall be given an opportunity to be heard] in support of such request for interview.[via written communication.]

(g) [All such] I[i]nterviews between representatives of the news media and an inmate shall be supervised [monitored]. But the security staff supervising [persons monitoring] such interview shall do so in a manner that minimizes interference consistent with the safety, discipline and orderly administration of the correctional facility[not interrupt or interfere with the interview nor make comments thereon, except where specific information may be requested by the news media representative.]

(h) The commissioner or his or her designee [superintendent]may refuse to permit such inmate - news media interview where such interview presents a clear and present danger to the security, discipline or orderly administration of the correctional facility or where the inmate has clearly abused his right of access to the news media by prior conduct in violation of the Standards of Inmate Behavior, 7NYCRR 270.2B[on a prior occasion].

(i) [Decisions of superintendents are not final. Where the request for an interview is denied by the superintendent, both] T[t]he inmate and the representative of the news media shall have the right to appeal media [such]denials to the c[C]ommissioner[of Correctional Services].

(j) An inmate who is interviewed by representatives of the news media shall not be subjected to departmental discipline or any other adverse action for participating in the interview or for the views expressed therein. [reprisals, retribution or retaliation because of such interview or for the views expressed therein.]

[(k) Inmates have a limited right to write letters to the news media or representatives thereof. Such letters may be opened and read in accordance with departmental procedures.]

Section 51.16. Use of names and photographs.

(a) [In the best interests of the inmate,] I[i]dentification by name will not be allowed unless the individual agrees to such use and signs a consent form (*reference NYSDOCS Directive #0401, Page 7, "Media Interview Consent form that is available on the Department's website at, <http://www.doccs.state.ny.us/directives.html>*) for such use of name. Such consent [forms]form will be provided by [both the interviewing news representative and]the Department of Correctional Services and *is in addition to any consent form that may be provided by the news media representative.* The consent form signed by persons under 18 must be endorsed by a parent or guardian before the use of name will be allowed.

(b) Identifiable photographs of inmates will not be allowed unless the individual agrees to be photographed and signs a consent form for such photograph and its use. *Such consent form will be provided by the Department of Correctional Services and is in addition to any consent form that may be provided by the news media representative.* Photographs of facilities will be allowed, providing no identifiable inmate is shown in any of the photographs. Persons under 18 must have their consent form endorsed by a parent or guardian before the use of a photograph will be permitted.

(c) A photographer accompanying a reporter need not be regularly employed by the publication, station or news service, but he must be engaged by it and specifically assigned as the official photographer. A photographer not accompanied by a reporter must meet all of the criteria of a bona fide reporter.

Section 51.20. Emergency situations.

In situations of an emergency nature, such as escapes, disturbances, etc., the cooperation of the news media is requested in that inquiries and information interviews be reasonably limited. The *public information officer or his or her designee* [superintendent of the facility where such emergency occurs]will issue periodic updating reports and will be available for interviews as he/she deems necessary.[,][timed for a.m. and p.m. press deadlines.] Emergency situations call for extensive effort on the part of the entire *agency* [facility staff and].[,] W[w]hile every effort will be made to keep information current, the emergency of the situation must be respected and the cooperation of the news media will be appreciated. When a correctional facility is placed under a "state of emergency," news media *access will be limited consistent with the criteria established in section 3.20 of this title.* [representatives will not be allowed access to certain areas as designated by the superintendent. Efforts will be made to provide secure areas from which photos may be taken.] Approval and designated areas shall be at the discretion of the *commissioner or his or her designee.* [superintendent. If the superintendent judges that the situation is extremely hazardous to news photographers, effort will be made to provide official photographs as soon as available.]

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

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

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

Regulatory Impact Statement

1. Statutory Authority

Section 112 of Correction Law grants the Commissioner of DOCS the superintendence, management and control of the correctional facilities and inmates confined therein and the authority to promulgate rules and regulations for this purpose. Section 29 (2) of Correction Law directs the Commissioner of DOCS to make rules as to the privacy of records, statistics and other information obtained by the Department or the Board of Parole. Section 146 of Correction Law grants the Commissioner the authority to prescribe regulations to allow persons not otherwise authorized by law to enter a correctional facility.

2. Legislative Objective

By vesting the Commissioner with this rulemaking authority, the legislature intended the Commissioner to promulgate such rules, regulations and disciplinary standards so as to provide for the safe, secure and orderly operation of correctional facilities for both staff and inmates, to help ensure public safety, and to ensure that the privacy and confidentiality of inmate and staff records is maintained in accordance with all applicable statutes and laws. As an agency of the state government, the Department must comply with Freedom of Information Law (FOIL). Except for information that is specifically made confidential such as youthful offender records, conviction and sentence information about offenders presently and previously incarcerated with the Department is generally considered among the public information that under Judiciary Law sections 4, 255 and 255-b may be released to the news media.

3. Needs and Benefits

As evidenced in the text of this proposed rule, several minor amendments were made to update appropriate terminology, (i.e., warden to superintendent, press to media) and to correct minor grammatical deficiencies. This rule routes information requests through the office of public information and/or the commissioner, rather than through each facility's superintendent. The intent is to ensure departmental consistency for responses and to ensure no confidential information is inadvertently supplied that could jeopardize institutional security or violate an individual's personal confidentiality. This manner of information dissemination has been in practice for several years and has proven to be an effective means of providing accurate and consistent responses to requests for information.

Section 51.18 is being repealed, as it was deemed to be redundant as news media representatives would be covered under the provisions of 7NYCRR, Part 53, Outsiders Visiting or Applying for Entrance to Institutions. Section 51.19 is being repealed since the death sentencing statute was ruled to be unconstitutional by the New York State Court of Appeals and therefore this section is no longer applicable.

The most extensive amendments proposed in section 51.15 pertain to Inmate Eligibility for News Media interviews and a statement to emphasize the Department's policy regarding the prohibition of discipline or any adverse action for an inmate's participation in a news media interview. The updated inmate eligibility criteria are to ensure the news media inmate interview process is consistent with state and federal law, as well as institutional security and the safety of all parties involved.

4. Costs

a. To agency, state and local government: No discernable costs are anticipated.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon the fact that the rule changes merely clarify existing policy and procedure. While there may be a perceived increase in the workload for the Office of Public Information in practice that office has been handling information requests in this manner for many years. Therefore, no additional procedures or new staff is necessary to implement the proposed changes. The reference to a media initiated consent form was added only to account for any consent form that the media representative may introduce for their own purposes. The only possible cost associated with this would be minimal photocopying costs for Department/facility recordkeeping purposes.

5. Paperwork

There are no new reports, forms or paperwork required as a result of amending these rules. The current "Media Interview Consent Form" remains in use and is unchanged.

6. Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

7. Duplication

These proposed amendments are consistent with existing State or Federal requirements.

8. Alternatives

DOCS considered the alternative of not promulgating this rule. However, it was determined that the regulations as currently stated provided for possible interpretations that would not be consistent with current Department practices regarding the release of information to the news media. The Department's current practices are the result of ongoing interactions and communications with the media over the course of many years. The intent is for the Department to be responsive to legitimate inquiries from the media without compromising the safety, security and good order of the correctional facilities or the confidentiality/privacy of staff and inmates as protected by all applicable statutes and laws.

The Department attempted outreach with media outlets regarding these specific regulation changes, however no feedback was received.

9. Federal Standards

There are no minimum standards of the Federal government for this or a similar subject area. In 1974, the Supreme Court of the United States held that the media had no constitutional right of access to correctional facilities or their inmates beyond that afforded the general public. *Pell v. Procunier*, 417 U.S. 817, at 834. Consequently, the proposed rule making provides the media with more access than federal law requires.

10. Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal is made in order to update terminology, correct minor grammatical errors and ensure responses to requests for information are consistency with Department security policies and applicable confidentiality laws.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal is made in order to update terminology, correct minor grammatical errors and ensure responses to requests for information are consistency with Department security policies and applicable confidentiality laws.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal is made in order to update terminology, correct minor grammatical errors and ensure responses to requests for information are consistency with Department security policies and applicable confidentiality laws.

shall only be made if such professional is licensed under one of the titles recognized by New York State's licensed professions. The Board may require an out-of-state provider to submit a copy of his/her license to the claimant for submission to the Board. Such counselling may include, but is not limited to: analysis of a victim's financial situation such as income producing capacity and crime related financial obligations; assistance with restructuring budget and debt; assistance in accessing insurance, public assistance and other benefits; assistance in completing the financial aspects of victim impact statements; and assistance in settling estates and handling guardianship matters. Any award for such expenses must be related to the crime and shall not exceed the actual monetary loss or fraudulent charges and/or debt incurred by the victim. For services provided during a six-month period or longer, the Board shall require evidence on a semiannual basis that such counselling continues to be necessary as a direct result of the crime.

Text of proposed rule and any required statements and analyses may be obtained from: John Watson, General Counsel, New York State Crime Victims Board, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority: Article 22 of the New York State Executive Law creates the Crime Victims Board (the Board) and section 623(3) grants the Board the authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22. New York State Executive Law section 621(22) includes a definition of financial counseling and section 631(2) provides that the Board may make awards for out-of-pocket losses including "... other services necessary. . ." which have been determined by the Board to include financial counseling. Executive Law section 631(8) goes one step further, specifically providing that an elderly or disabled victim, who has not been physically injured as a direct result of a crime, shall be eligible for financial counseling. In instances where there are no financial caps on non-medical expenses provided in the statute, the Board has consistently applied a "reasonableness" standard, in order to meet its fiduciary duties as a state agency. These changes are proposed in order for the Board to meet its statutory obligations and allow claimants to be aware of what the Board would consider eligible for an award in a reasonable, fiscally prudent and consistent manner.

2. Legislative objectives: By enacting the New York State Executive Law sections 621(22) and 631(2) and (8), the Legislature sought to ensure that the Board could reimburse certain out-of-pocket losses for services necessary as a result of the injury upon which the claim is based, including financial counseling for all claimants generally and specifically for elderly and disabled victims who have not suffered a physical injury.

3. Needs and benefits: Currently, Article 22 of the New York State Executive Law provides that the Board may make awards for out-of-pocket losses which may include financial counseling. Regulations (9 NYCRR 525), however, do not explicitly define financial counseling or provide guidance to claimants or the Board as to how such awards may be made. The financial counseling provisions in Article 22 were added by Chapter 391 of the Laws of 2003. Since the addition of financial counseling to Article 22, the Board is unaware of any requests from or awards made to claimants for such an expense. However, financial crimes such as identity theft and illegal investment schemes have been on the increase during the state and country's recent economic crisis. These are particularly devastating crimes when perpetrated against the elderly and disabled whose financial resources are limited. As Article 22 of the Executive Law makes financial counseling an available benefit, it is imperative the Board establish rules related to the award or denial of such benefits in order to ensure that claimants understand which counseling services are eligible for an award and that the Board's determinations are not arbitrary and are able to survive potential judicial review. Generally, when the Board examines a request for the reimbursement of services, the Board has consistently required that they be provided by licensed professionals. Also, in instances where there are no financial caps on non-medical expenses provided in the statute, the Board has consistently applied a "reasonableness" standard in order to meet its fiduciary duties and limit the Board's liability for such awards. These proposed changes are necessary in order for claimants or potential claimants to be aware of what the Board would consider eligible for an award under its statutory authority, for the Board to make consistent award determinations, and to reasonably limit the Board's award for such expenses to no more than was lost or fraudulently incurred by the claimant.

4. Costs: a. Costs to the State. The proposed regulations would not impose any additional costs to the agency or State beyond those required by existing law. The proposed regulatory additions should, in fact, result in the efficient use of award dollars by (1) clearly defining the circum-

Crime Victims Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financial Counseling

I.D. No. CVB-30-09-00003-P

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

Proposed Action: Addition of section 525.1(q) to Title 9 NYCRR.

Statutory authority: Executive Law, sections 621 and 631

Subject: Financial counseling.

Purpose: To establish the process through which claimants may be reimbursed by the Board for financial counseling.

Text of proposed rule: A new subdivision (q) is added to section 525.1, to read as follows:

(q) "Financial counselling" shall mean financial services provided by an experienced financial counselor or adviser, who is licensed by New York State and operating within his/her licensed discipline. If the provider is out-of-state, payment for services within his/her licensed discipline

stances under which the Board would consider an award for financial counseling under its statutory authority, (2) imposing a reasonable fiscal cap on such expenses and (3) requiring periodic review of the necessity of such services. In instances where the statute does not provide a specific cap to benefits, the Board applies a “reasonableness” standard. It has been determined by the Board to be reasonable to expect that no person would pay out-of-pocket for financial counseling any more than they have lost as a result of such crime. Also, these provisions would reduce administrative time spent reviewing ineligible claims filed with the Board because claimants or potential claimants would be made aware of what the Board would consider eligible for an award under its statutory authority.

b. Costs to local governments. These proposed regulations do not apply to local governments and would not impose any additional costs on local governments.

c. Costs to private regulated parties. The proposed regulation would not impose any additional costs on private regulated parties. Claimants who choose to receive reimbursement for the cost of financial services will incur minimal administrative costs for preparing and submitting the application and follow-up documentation.

5. Local government mandates: These proposed regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: These proposed regulations will create minimal, additional paperwork requirements for claimants. Such requirements may include obtaining a copy of a provider’s license, and additional correspondence between the Board, the claimant and the claimant’s provider to verify the services received and their necessity.

7. Duplication: These proposed regulations do not duplicate any other existing state or federal requirements.

8. Alternatives: Since the addition of financial counseling to Article 22 of the Executive Law, the Board is unaware of any requests from or awards made to claimants for such an expense. Financial crimes, particularly against the elderly, are however on the increase and the Board must establish rules related to the award or denial of such benefits. In anticipation of such a request, it is essential to implement a provision such as the one proposed to provide some certainty to claimants or potential claimants and consistent Board decisions on the subject. Alternatives to the circumstances under which the Board would consider an award for financial counseling under its statutory authority were examined, but the Board determined it should apply the proposed methodology.

An alternative methodology considered included defining the services but not including any cap or periodic review of the necessity of services. When examining alternative language, the major concerns of the Board included the possible run-away expenses of an uncapped, awardable expense and potential abuse by providers of these services. In instances where the statute does not provide a specific cap to benefits, the Board applies a “reasonableness” standard. It has been determined by the Board to be reasonable to expect that no person would pay out-of-pocket for financial counseling any more than they have lost as a result of such crime. By imposing a reasonable fiscal cap on such expenses to no more than the claimant has lost and requiring periodic review of the necessity of such services, such concerns have been addressed.

9. Federal standards: These proposed regulations are not forbidden or duplicated by any federal requirements.

10. Compliance schedule: The regulations will be effective on the date they are adopted.

Regulatory Flexibility Analysis

The New York State Crime Victims Board (the Board) projects there will be no adverse economic impact on small businesses or local governments in the State of New York as a result of this proposed rule change. This proposed rule change simply defines financial counseling and enumerates the circumstances under which the Board would consider an award including reimbursement for financial counseling. Since nothing in this proposed rule change will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

A licensed financial counselor who provides financial counseling services to an eligible claimant will need to provide verification information of such services and their necessity to the claimant for submission to the Crime Victims Board. An out-of-state financial counselor may need to provide a copy of his/her professional license related to such service.

Rural Area Flexibility Analysis

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on public or private entities in rural areas in the State of New York as a result of this proposed rule change. This proposed rule change simply defines financial counseling and enumerates the circumstances under which the Board would consider an award including

financial counseling. Since nothing in this proposed rule change will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

A licensed financial counselor who provides financial counseling services to an eligible claimant will need to provide verification information of such services and their necessity to the claimant for submission to the Crime Victims Board. An out-of-state financial counselor may need to provide a copy of his/her professional license related to such service.

Job Impact Statement

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change simply defines financial counseling and enumerates the circumstances under which the Board would consider an award including financial counseling. Since nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Computation of Nonresident Pupil Tuition Rate

I.D. No. EDU-18-09-00007-RP

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

Proposed Action: Amendment of section 174.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 2040(1) and (2), 2041(not subdivided), 2042(not subdivided), 2045(1) and 3602

Subject: Computation of nonresident pupil tuition rate.

Purpose: To conform section 174.2 to the Foundation Aid provisions enacted by Chapter 57 of the Laws of 2007 and other statutory changes.

Text of revised rule: Section 174.2 of the Regulations of the Commissioner of Education is amended, effective October 8, 2009, as follows:

§ 174.2 Computation of tuition charges for nonresident pupils.

The provisions of this section shall apply to all contracts [entered into after January 1, 1975,] for the reimbursement of a school district which provides instruction to a nonresident pupil. The charge for the instruction of each nonresident pupil shall not exceed the actual net cost of educating such pupil. If the accounting records of the school district providing such instruction are not maintained in a manner which would indicate the net cost of educating such pupil, a board of education, board of trustees or sole trustee of each school district shall compute the tuition to be charged for the instruction of each nonresident pupil admitted to the schools of such district, or for the education of whom such district contracts with a board of cooperative educational services, in accordance with the following formulae:

(a) The tuition to be charged by a school district which provides full-day instruction for each nonresident pupil shall be computed as follows:

(1) . . .

(2) . . .

(3) The net amount of State aid received by the school district, as defined in this paragraph, shall be distributed among the categories set forth in paragraph (2) of this subdivision in the same proportion that the [aidable pupil units] *average daily membership* in each of such categories bears to the [total aidable pupil units] *average daily membership* for the school district. [Such aidable pupil units] *For the purposes of this section, such average daily membership shall be computed in accordance with the provisions of paragraph 1 of subdivision [8] 1 of section 3602 of the Education Law, except that for the purpose of this computation the [additional aidable pupil units for pupils enrolled in special schools] enrollment of pupils attending under the provisions of paragraph c of subdivision 2 of section 4401 of the Education Law and the equivalent attendance*

of the school district, as computed pursuant to paragraph d of subdivision 1 of section 3602 of the Education Law, shall not be included in such computation. For the purposes of this section, net State aid shall include aid received in the general fund for operating expenses, textbooks, experimental programs, educational television, county vocational boards and boards of cooperative educational services, building aid, and other forms of State aid as approved by the department for inclusion herein, but shall not include transportation aid [or aid attributable to pupils attending special schools]. Net State aid shall also include the sum which is withheld from the school district for payment to the teacher's retirement fund.

(4) . . .

(5) The maximum nonresident pupil tuition which may be charged shall be determined by dividing the net cost of instruction of pupils in each category by the estimated average daily [attendance] membership of pupils in each category.

(6) Refunds or additional charges shall be made at the conclusion of the school year based upon actual revenues, expenditures and average daily [attendance] membership.

(b) . . .

(c) . . .

Revised rule compared with proposed rule: Substantial revisions were made in section 174.2(a)(3).

Text of revised proposed rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Comm of Educ. P-16, State Education Department, State Education Building Annex Room 875, 89 Washington Avenue, Albany, NY 12234, (518) 474-5915, email: p16education@mail.nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on May 6, 2009, the following revisions were made to the proposed rule.

In the opening paragraph of section 174.2, the phrase "entered into after January 1, 1975" was deleted as obsolete, outdated language.

In paragraph (3) of subdivision (a) of section 174.2, an inadvertent omission in the originally published proposed rule was corrected by deleting the phrase "aidable pupil units", as it first appears in the first sentence, and adding the phrase "average daily membership", for purposes of consistency with the proposed changes to "average daily membership" found elsewhere in such paragraph.

In paragraph (3) of subdivision (a) of section 174.2, a citation was corrected by replacing the phrase "paragraph 1 of subdivision [8] 1 of section 3602 of the Education Law" with the phrase "paragraph 1 of subdivision [8] 1 of section 3602."

In paragraph (3) of subdivision (a) of section 174.2, the phrase "additional aidable pupil units for pupils enrolled in special schools" was deleted as outdated, since it reflects pupils that are not currently a part of average daily membership.

Paragraph (3) of subdivision (a) of section 174.2, the provision excluding "average daily attendance included in the daily membership of the school district pursuant to subdivision 8 of section 3602-c of the Education Law" (dual enrollment), from computation of average daily membership in accordance with Education Law section 3602(1)(l), was deleted. The exclusion of dual-enrolled pupils from such calculation would have overstated the per-pupil cost of education because the expenditures associated with educating these students is a part of the overall expenditure used in the nonresident tuition computation.

The above revisions do not require any changes to the Regulatory Impact Statement previously published in the *State Register* on May 6, 2009. However, the Statutory Authority section of the Regulatory Impact Statement included an incorrect statutory citation and omitted the correct statutory citations, and has been revised to read as follows:

STATUTORY AUTHORITY:

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

Education Law section 2040(1) authorizes a school district by majority vote of the qualified voters to contract for the education of its pupils by one or more other school districts in the State. Education Law section 2040(2) provides that the designation of the school districts with which such contracts may be made shall be made pursuant to the Commissioner's regulations.

Education Law section 2041 authorizes school districts to enter into contracts to receive and educate the children of any district which

authorizes its board of education or trustees to contract for the education of its children pursuant to Education Law section 2040.

Education Law section 2042 pertains to the form and validity of contracts for the education of nonresident pupils.

Education Law section 2045(1) provides that the tuition charged for the instruction of nonresident pupils in excess of the difference between the cost of educating such pupils and the apportionment of public moneys on account of the attendance of such pupils shall be a charge upon the district from which such nonresident pupil attends, subject to the right of such district to designate the school where instruction shall be given at the district's expense, and provided that no tuition shall be payable by the district of residence for the education by another district of an elementary pupil unless a contract has been entered into between such districts.

Education Law section 3602 provides for the apportionment of State monies to school districts, and the process therefore. Chapter 57 of the Laws of 2007 amended section 3602 to change the school funding system by replacing approximately 30 State aid items with a single Foundation Aid.

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the *State Register* on May 6, 2009, proposed rule was revised as described in the Statement Concerning the Regulatory Impact Statement.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the *State Register* on May 6, 2009, proposed rule was revised as described in the Statement Concerning the Regulatory Impact Statement.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the *State Register* on May 6, 2009, the proposed rule was revised as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed amendment, as revised, relates to the payment of State aid to school districts, and is necessary to reflect the Foundation Aid provisions enacted by Chapter 57 of the Laws of 2007 and to otherwise bring the Commissioner's Regulations into compliance with other statutory changes to the law. As such, the rule making conforms the Commissioner's Regulations to existing statutes and practices, and does not impose any additional compliance requirements, mandates or costs on school districts, and will not have an adverse impact on job or employment opportunities. Because it is evident from the nature and purpose of the proposed revised 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.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on May 6, 2009, the State Education Department received the following comments on the proposed rule.

1. COMMENT:

The proposed rule is not necessary and the State Aid formula changes resulting from the institution of Foundation Aid do not necessitate any regulatory changes. Concerns were also raised regarding fiscal impact.

DEPARTMENT RESPONSE:

The Department disagrees. Chapter 57 of the Laws of 2007 changed the school funding system by replacing approximately 30 State aid items with a single Foundation Aid, which is determined on the basis of "average daily membership" rather than "average daily attendance." The existing regulation is defective and the proposed rule is necessary to conform to changes enacted by Ch. 57, L. 2007 by correcting technical defects, and to reflect the intent of Ch. 57, L. 2007 and Education Law section 2045 in determining the cost to districts of educating nonresident pupils.

The proposed rule is needed to replace a citation in 174.2(a)(3) to Education Law section 3602(8), which was repealed by Ch. 57, L. 2007, with the correct, current citation to Education Law section 3602(1)(l).

Moreover, Operating Aid was one of the State Aid categories that Ch. 57, L. 2007 replaced with Foundation Aid. Therefore, it was necessary to amend 174.2 to provide for calculations involving State aid received for operating expenses to be made on the basis of Foundation Aid.

Finally, Education Law section 2045(1) requires that tuition for nonresident pupils may not exceed the difference between actual costs and State Aid. It was also necessary to amend section 174.2 because the State aid formula in the existing section 174.2 is defective and no longer reflects actual State aid under the Foundation aid formula established by Ch. 57, L. 2007.

2. COMMENT:

The computation of aidable costs should not include expenses related to special education students enrolled in BOCES programs.

DEPARTMENT RESPONSE:

The Department agrees, but has determined that this issue is already addressed in the current methodology and does not require additional regulatory language.

3. COMMENT:

The term "aidable pupil units" where it first appears in the first sentence of paragraph (3) of subdivision (a) of section 174.2, should be replaced with the term "average daily membership" to be consistent with the proposed changes to "average daily membership" found elsewhere in such paragraph.

DEPARTMENT RESPONSE:

The Department agrees and the proposed rule has been revised to include this change.

4. COMMENT:

The proposed pupil count used for average daily membership should be revised to include those nonpublic pupils who attend public schools for part of the day for special education, programs for the gifted and career education (dual enrollment) and should be used consistently throughout the regulation. In addition, the reference to "the additional aidable pupil units associated with pupils in special schools" reflects pupils that are not currently a part of average daily membership, and should be removed.

DEPARTMENT RESPONSE:

The Department agrees and the proposed rule has been revised to include these changes. The exclusion of dual-enrolled pupils would overstate the per-pupil cost of education because the expenditures associated with educating these students is a part of the overall expenditure used in the nonresident tuition computation. The reference to "pupils in special schools" is outdated and should be deleted.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Proposed Regulations are for the CWSRF Co-administered by NYSDEC and the Environmental Facilities Corporation

I.D. No. ENV-30-09-00006-E

Filing No. 807

Filing Date: 2009-07-10

Effective Date: 2009-07-12

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

Action taken: Amendment of Part 649 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 15-0101, 15-0105, 15-0109, 15-0315, 15-0317, 15-1303; and L.1989, ch. 565

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

Specific reasons underlying the finding of necessity: The New York State Department of Environmental Conservation ("DEC") Environmental Facilities Corporation ("EFC") has determined that the attached amendment to the Part 649 of Title 6 Clean Water State Revolving Fund (SRF) Regulations, Part 2602 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is in the public interest and necessary for the preservation of the general welfare throughout the State of New York and that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act ("SAPA"), effective immediately upon filing with the Department of State.

This amendment has been adopted as an emergency measure as it is in the public interest to expeditiously use funds made available pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA") to create jobs and stimulate the economy and thus, time is of the essence. The immediate promulgation and adoption of these amended regulations is necessary for the protection and preservation of life, health, property and natural resources due to the severe economic downturn, the possible destabilization of State and local government budgets, the prospect of reduction of essential services and counterproductive local tax increases

which will exacerbate the current economic conditions. If the rules are not adopted, projects that protect the public health will not be funded and therefore, not be built. The expected duration of such emergency is expected to last through the 90-day emergency time period and any subsequent 60-day extension of such emergency period while DEC EFC initiates and concludes formal rulemaking procedures for the amended regulations. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the SRF to obtain ARRA funds and provide the same to SRF applicants. In order to meet the tight timeframes of ARRA, these regulations need to be in place. Therefore, compliance with the rule making requirements of section 202(1) of the SAPA would be contrary to the public interest and, as such, the current circumstance necessitates that that the public and interested parties be given less than the minimum period for notice and comment provided for in section 202(1) of SAPA.

These revisions conform the current SRF regulations with the requirements and objectives set forth in the ARRA, which are to preserve and create jobs, promote economic recovery and invest in environmental protection and to provide short and long-term economic benefits. ARRA requires that SRF funds be provided to projects on a State's intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA. Further, the Environmental Protection Agency Administrator is directed to reallocate funds where projects are not under contract or construction within 12 months of the date of enactment of ARRA. Criteria for Green Infrastructure projects will be included in the intended use plan. Given that the science of Green Infrastructure is changing, including the criteria in the intended use plan allows for development and use of the most up to date criteria for Green Infrastructure Projects. In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to fund these types of projects.

With the downturn in the financial markets, residents have seen a dramatic decrease in home values as well as in other assets. Through out the State, businesses are retrenching and closing. Home foreclosure rates in the State have increased. State unemployment levels have risen to 7.8 percent as of February, 2009.

The need to address clean water infrastructure to protect water quality and to reduce operational costs has become more pressing as the economy trends downwards. Compliance with ARRA requirements will provide additional Federal funds to accomplish these purposes.

A potential stimulus package was widely discussed and broadcast on all major networks, television, radio, newspapers and on the web. The details and adoption of ARRA were similarly widely disseminated, as well as the State's interest in utilizing such funds.

The adoption of these emergency regulations is consistent with EFC's statutory mission, which is to provide financial assistance for essential environmental infrastructure projects for the benefit of the people of New York State.

Subject: The proposed regulations are for the CWSRF co-administered by NYSDEC and the Environmental Facilities Corporation.

Purpose: To set forth rules implementing the statutory provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA").

Substance of emergency rule: I. SUBJECT:

The proposed revised regulations are for the New York State Clean Water Revolving Fund ("CWSRF"), Section 1285-j of the Public Authorities Law ("PAL"), co-administered by the New York State Environmental Facilities Corporation ("EFC") and the New York State Department of Environmental Conservation ("DEC"), pursuant to Chapter 565 of the Laws of 1989.

II. PURPOSE:

The proposed regulations set forth rules and procedures whereby EFC and DEC implement the requirements and objectives of the American Recovery and Reinvestment Act of 2009 ("ARRA") to enable the State Revolving Fund ("SRF") to accept and expend Federal funds to stimulate the economy and retain and create jobs for the benefit of the people of the State.

Among the changes is an addition to the CWSRF Project Priority System ("PPS") for the purpose of including green infrastructure, water or energy efficiency improvements or other environmentally innovative activities as required by ARRA.

III. GENERAL SUBSTANCE:

It is proposed to amend the regulations found within 6 NYCRR Part

649 (Companion regulations found within 21 NYCRR Part 2602 will also be changed).

The proposed regulatory amendments serve to incorporate provisions required by or necessitated by ARRA. The term of additional subsidization in the form of forgiveness of principal, a negative interest loan or a grant is added to allow the SRF to provide principal forgiveness or grants, as required by ARRA. Modifications are made to provide flexibility in certain financial terms and products to meet the objectives of ARRA to stimulate the economy and help initiate projects. In addition, the definition of project is expanded to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The proposed amendments will also permit financing of pre-design planning costs prior to completion to further stimulate project development. The proposed amendments will also add school district and soil and water conservation district to the definition of recipient. The provisions regarding project bypassing are also clarified to meet the objectives of ARRA as to project readiness. The proposed regulations will also clarify disbursements and that if certain requirements, including those mandated by ARRA, are not met that the SRF may decline to disburse funds, and if released, recover said funds. Similarly, the remedies provisions are clarified.

Certain definitions are amended within the regulations to expand the types of financial products available. It is proposed to add a new definition of "direct interest rate" and other definitions be modified to allow the SRF to address current and changing market conditions. The hardship assistance program is set out in a new section, and simplified, and clarified to indicate that in the event of a shared municipal project, hardship eligibility will be based upon a municipality's allocable portion of the shared project.

Section 2602.3(a) of EFC's proposed new regulations regarding the PPS make a cross reference to the PPS contained in Section 649.12 of DEC's regulations. It is proposed that the PPS be expanded to include a new category (Category G) for green infrastructure, water or energy efficiency improvements or other environmentally innovative activities in order to meet the objectives of the ARRA.

The proposed regulations provide for an annual allocation for Category G, including a project funding cap, to be determined annually by the Commissioner and described in the IUP. Through these changes, CWSRF funds may be made available to a variety of recipients (public and private) carrying out green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

In addition, there are proposed administrative-oriented changes to EFC's regulations. The following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: "Interest rate subsidy", "Leveraged financing", "Market rate of interest", and "Reduced interest rate." Grammatical changes will include the consistent use of capitalized terms, such as "Corporation", "Department", "Commissioner", "Comptroller" and "Administrator" and use of the acronym "Clean Water" Revolving Fund instead of "Water Pollution Control" Revolving Fund.

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 October 7, 2009.

Text of rule and any required statements and analyses may be obtained from: Robert Simson, New York State Department of Environmental Conservation, Division of Water, 4th Floor, 625 Broadway, Albany, New York, 12233-3500, (518) 402-8271, email: rjsimson@gw.dec.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY

When the Legislature enacted Chapter 565 of the Laws of 1989, it created the New York State Clean Water Revolving Fund ("CWSRF") and, in part, amended the State's Environmental Conservation Law ("ECL"), creating ECL Section 17-1909, and Public Authorities Law ("PAL") Section 1285-j, both of which set forth the provisions of the CWSRF. Under ECL Section 17-1909 and Section 1285 of the PAL, the New York State Department of Environmental Conservation ("DEC") and the New York State Environmental Facilities Corporation ("EFC") are given the statutory authority to administer the CWSRF. Under Section 17-1909 of the ECL, DEC is given the statutory authority to promulgate regulations for the purpose of carrying out its responsibilities with respect to the administration of the CWSRF. Pursuant to Section 1285, the Legislature provided that "moneys in the water pollution control revolving fund shall be applied by the corporation to provide financial assistance to municipalities for construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner, for such other purposes permitted by the Federal Water Pollution Control Act, as amended...." In addition, the Federal Clean Water Act of 1986 ("CWA")

provided for the establishment, by each state, of a revolving fund, for certain identified water pollution control projects. During the last year, the economy has weakened significantly and the American Recovery and Reinvestment Act of 2009 ("ARRA") was signed into law amending the CWA in an effort to stimulate the economy through building environmental infrastructure.

2. LEGISLATIVE OBJECTIVES

In creating the CWSRF under the ECL and in Public Authorities Law ("PAL"), the Legislature directed DEC and EFC to provide assistance in support of the planning, development and construction of municipal water pollution control projects and other types of projects permitted by the CWA. ARRA provides federal funds through the CWSRF to create and retain jobs, to stimulate the economy and to promote green infrastructure. Pub.L. 111-5, § 4, February 17, 2009, 123 Stat. 115, Section. 3. Purposes and Principles, (a) Statement of Purposes; and Title VII, Environmental Protection Agency, STATE AND TRIBAL ASSISTANCE GRANTS. DEC and EFC are amending the CWSRF regulations in order to comply with the objectives and requirements of ARRA in order to accept and utilize these Federal funds for projects within New York State. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the CWSRF to obtain ARRA funds and provide the same to CWSRF applicants.

These revisions conform the current CWSRF regulations with the requirements set forth in the ARRA to more effectively carry out the legislative objectives, which are to preserve and create jobs, promote economic recovery, invest in environmental protection and to provide short and long-term economic benefits. In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to provide the same. ARRA requires that SRF funds be provided to projects on a State's intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA. Pub.L. 111-5, § 4, February 17, 2009, 123 Stat. 115, Title VII, Environmental Protection Agency, State and Tribal Assistance Grants (1).

The proposed regulations amend the regulations found in 6 NYCRR Part 649 and, as appropriate, the 21 NYCRR Part 2602 companion regulations of EFC to: (i) add a new definition of "additional subsidization" that will allow the provision of forgiveness of principal, a negative interest loan or a grant, as either financial assistance or hardship assistance; (ii) amend the definition for "project" to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities; (iii) expand the CWSRF Project Priority System ("PPS") to include a new category (Category G) for green infrastructure projects allowed under the ARRA and CWA; (iv) permit financing of pre-design planning costs prior to completion to further stimulate project development; (v) clarify provisions regarding project bypassing to meet the objectives of ARRA as to project readiness; and (vi) other administrative-oriented changes, including the changing of various definitions in the regulations for purposes of increasing flexibility in CWSRF financial terms and products to address current market conditions and meet the objectives of ARRA to stimulate the economy and help initiate projects. Pub.L. 111-5, § 4, February 17, 2009, 123 Stat. 115, Title VII, Environmental Protection Agency, STATE AND TRIBAL ASSISTANCE GRANTS; and Sections 1605: Buy American and Section 1606: Wage Rate Requirements.

3. NEEDS AND BENEFITS

As set forth above, ECL 17-1909 and PAL Section 1284(5), give DEC and EFC the authority to make and alter regulations to fulfill its purposes under its enabling statutes. Compliance with ARRA objectives and requirements will provide substantial additional Federal funds to the CWSRF to construct eligible clean water infrastructure projects and to reduce operational costs.

The proposed regulations allow DEC to use CWSRF funding for green infrastructure, water, and energy efficiency improvements or other environmentally innovative activities and projects, and allow EFC after notification to DEC to bypass projects based upon project readiness to meet the requirements of ARRA and address changing market conditions through the provision of additional financial products as well as providing funds for pre-design planning prior to completion in order to facilitate project initiation. Pub.L. 111-5, § 4, February 17, 2009, 123 Stat. 115, Title VII, Environmental Protection Agency, STATE AND TRIBAL ASSISTANCE GRANTS (1); These changes will provide greater access to funding for CWSRF recipients and stimulate environmental projects.

The use of ARRA funds in New York State will create and retain jobs,

and stimulate the construction of authorized critical environmental infrastructure throughout New York State.

With the changes outlined above being made to the current CWSRF regulations, a clean up of the regulatory definitions will need to be done to reflect these changes. For example, the following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: "Interest rate subsidy", "Leveraged financing", "Market rate of interest", and "Reduced interest rate."

4. COSTS

Participation in the CWSRF program is voluntary. The proposed amendments will not result in any additional costs to recipients other than those with respect to meeting ARRA requirements.

5. LOCAL GOVERNMENT MANDATES

None. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would be responsible for compiling the documentation necessary to submit a complete application to EFC for its consideration and review, and meet the requirements of ARRA.

6. PAPERWORK

The proposed amendments do not require any additional paperwork. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would have to submit the documentation required for a complete application to EFC for its consideration, and meet the reporting requirements of ARRA. Pub.L. 111-5, § 4, February 17, 2009, 123 Stat. 115, Title XV. Accountability and Transparency, Subtitle A - Transparency and Oversight Requirements.

7. DUPLICATION

The proposed amendments to 21 NYCRR Part 2602 will be consistent, as applicable, with the DEC CWSRF regulations found in 6 NYCRR Part 649.

8. ALTERNATIVES

Upon review of the current regulations and the programmatic changes sought to be implemented, the proposal outlined above is the most efficient means by which the CWSRF regulations can be updated and the programmatic changes implemented.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal government standards.

10. COMPLIANCE SCHEDULE

There is no relevant compliance schedule to consider with respect to the rule. However, ARRA imposes specific requirements including project readiness in order for a project to qualify for funding, as cited above.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

Small businesses and local governments throughout New York State will be affected in a positive manner as a result of the promulgation of this rule. The American Recovery and Reinvestment Act of 2009 ("ARRA") will provide over \$432 million in additional funding for New York State Clean Water State Revolving Fund ("CWSRF") projects, including sewage treatment works, sewage collection systems and solid waste disposal facilities. In addition, ARRA mandates that at least twenty percent of the funds be distributed for green infrastructure projects, water or energy efficiency or other environmentally innovative activities.

The infusion of these CWSRF funds into the New York State economy will preserve and create a significant number of jobs, primarily via funding for water pollution control construction projects. This will have commensurate positive effect on small businesses and consultants involved in the construction of environmental infrastructure projects, in particular engineering firms, financial consulting firms and attorneys. Small businesses are actively involved in the clean water construction industry in New York State. The rule will also expand the types of projects eligible to receive funding under the CWSRF to include green infrastructure projects, thereby creating additional opportunities for small businesses engaged in these types of projects. This will in turn provide an economic stimulus to localities, including additional tax revenues for local governments.

The types of local governments to be affected by this rule may include cities, towns, villages, and counties throughout New York State as they are considered eligible borrowers under the CWSRF. This rule will have a positive effect on local governments which maintain their own engineering and/or public works departments and are primarily responsible for the engineering, planning, design and construction of clean water projects. This additional funding will allow such local governments to preserve and create jobs in connection with these types of projects.

2. COMPLIANCE REQUIREMENTS

Participation in the CWSRF by small businesses and local governments is entirely voluntary. Any reporting or recordkeeping imposed by this rule would solely be the result of their decision to participate in the CWSRF program. Such participation would require compliance with existing

CWSRF reporting and recordkeeping requirements and any reporting and recordkeeping requirements imposed by the ARRA.

3. PROFESSIONAL SERVICES

Small businesses and local governments who voluntarily participate in the CWSRF program may need to retain professional services for green infrastructure projects to be authorized under the proposed rule. Otherwise, no new professional services will be required by this rule.

4. COMPLIANCE COSTS

No initial capital costs will be incurred by a regulated business or industry or local government to comply with the rule. Initial or continuing compliance costs for reporting and recordkeeping should not vary depending on the size of such small business or local government. However, these reporting and recordkeeping requirements for small businesses and local governments will vary depending on the type, size and complexity of the project and the number of applicable local, state and federal approvals required. These initial or continuing compliance costs, however, only occur when the small business or local government voluntarily elects to participate in the CWSRF program.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

There are no anticipated economic or technological feasibility compliance requirements on small businesses or local governments as a result of this rule. The purpose of this rule is to provide funds to stimulate the economy of the New York State, to preserve and protect jobs and to stabilize local tax bases. Participation in the CWSRF program is entirely voluntary and any direct or indirect compliance requirements will result from small businesses and local governments applying for and seeking CWSRF assistance.

6. MINIMIZING ADVERSE IMPACT

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the ARRA, which are to preserve and create jobs, to promote economic recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in state services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation ("EFC") considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-b(1). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Rulemaking and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate business councils, trade groups or other associations which represent small businesses and local governments to ensure that small businesses and local governments will be given an opportunity to participate in the rulemaking process.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The proposed rule will affect all types of rural areas throughout all of New York State, particularly those in need of sewage treatment facilities, sewage collection facilities, solid waste disposal facilities and other eligible Clean Water State Revolving Fund ("CWSRF") projects.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

Participation in the CWSRF by any recipient within a rural area is entirely voluntary. Any reporting, recordkeeping or other compliance requirements would solely be the result of their deciding to participate in the CWSRF program. Such participation would require compliance with existing CWSRF reporting and recordkeeping requirements and any reporting and recordkeeping requirements imposed by the American Recovery and Reinvestment Act of 2009 ("ARRA"). However, the provisions of the proposed rule, in and of themselves, will not require any additional reporting or recordkeeping by rural areas.

3. COSTS

No initial capital or annual costs will be incurred by public or private entities in rural areas as a result of this rule. Initial capital costs and any annual costs to comply with the rule will vary depending upon the size and complexity of the project and the number of applicable local, state and federal approvals required. However, any initial capital or annual compliance costs occur only when public or private entities in rural areas voluntarily elect to participate in the CWSRF program.

4. MINIMIZING ADVERSE IMPACT

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the ARRA, which are to preserve and create jobs, to promote economic

recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in state services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation (“EFC”) considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-bb(7). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

5. RURAL AREA PARTICIPATION

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Adoption and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate organizations and other associations which represent rural areas to ensure that public and private entities will be given an opportunity to participate in the rulemaking process.

Job Impact Statement

1. NATURE OF IMPACT

The rule will have a positive impact on jobs and employment opportunities. A primary goal of the American Recovery and Reinvestment Act of 2009 (“ARRA”) is job preservation and creation. The infusion of over \$432 million dollars into the New York State Clean Water State Revolving Fund (“CWSRF”) will preserve and create a significant number of jobs, in particular those involving construction of sewage collection systems, sewage treatment works and solid waste disposal facilities. The rule will also provide jobs and employment opportunities for consultants involved with CWSRF projects, including engineers, attorneys and financial advisors. The rule will also create additional job opportunities for private and public entities interested in green infrastructure, water or efficiency improvements or other environmentally innovative activities.

2. CATEGORIES AND NUMBERS AFFECTED

The categories of jobs most directly affected will be those of engineers, attorneys, financial advisors and construction related trades in the planning, design, construction and the obtaining of the necessary government permits and approvals regarding these projects.

3. REGIONS OF ADVERSE IMPACT

None. This rule will have a positive impact on jobs and employment opportunities throughout all regions of New York State.

4. MINIMIZING ADVERSE IMPACT

The provisions of the rule will have no unnecessary adverse impacts on existing jobs, but will promote the development of new employment opportunities. Therefore, no measures to minimize adverse impacts needed to be taken.

5. SELF-EMPLOYMENT OPPORTUNITIES

The proposed rule will have a positive effect on self-employment opportunities related to the construction field and consultants therein.

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

Deer Hunting Regulations

I.D. No. ENV-30-09-00019-P

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

Proposed Action: Amendment of section 1.22 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303 and 11-0907

Subject: Deer hunting regulations.

Purpose: To update muzzleloading regulations in the Northern Zone.

Text of proposed rule: Subdivision (a) of 6 NYCRR section 1.22 is amended as follows:

(a) “Northern Zone.” The types of deer that may be legally harvested, the open Wildlife Management Units (WMUs) as described in section 4.1 of this Title and the open season dates (First and Second splits) for muzzleloading in the Northern Zone are set forth below.

“Open WMUs for harvest of deer of either sex”	“Open WMUs for harvest of antlerless deer or deer having both antlers less than three inches in length”	“Open WMUs for harvest of antlered deer only”
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FIRST SPLIT of the muzzleloading season for deer shall be the seven days immediately preceding the Northern Zone regular big game season:

5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K

6N

SECOND SPLIT of the muzzleloading season for deer shall be the seven days immediately following the Northern Zone regular big game season:

5A, 5G, 5J, 6A, 6C, 6G, 6H

Text of proposed rule and any required statements and analyses may be obtained from: Jeremy Hurst, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8883, email: wildliferegs@gw.dec.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.

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

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

Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL section 11-0907 provides for the regulation of deer and black bear hunting seasons.

2. Legislative objectives:

The legislative objective behind the statutory provisions listed above is to establish, or authorize the department to establish by regulation, certain basic wildlife management tools, including the setting of open areas, and restrictions on methods of take and possession. These tools are used by the department to maintain desirable wildlife species in ecological balance, while observing sound management practices.

3. Needs and benefits:

The department proposes to amend 6 NYCRR section 1.22 (Muzzleloading firearm deer season) to open wildlife management unit (WMU) 5A for either-sex deer harvest during the late muzzleloading season.

WMU 5A (primarily in Clinton County) was previously open for the late muzzleloading season from 1999 through 2002. Harsh winters in the unit in 2000 and 2003 reduced the deer population and the deer harvest, and the late muzzleloading season was closed beginning in 2003 to allow the deer herd to recover. Deer harvests since 2003 have increased, and winter weather has not been a major factor since then, so the harvest of more antlerless deer is appropriate.

4. Costs:

Implementation of this regulation has no additional costs, other than the normal administrative expenses.

5. Local government mandates:

This rule making imposes no mandates upon local governments.

6. Paperwork:
No additional paperwork is associated with this rule-making.
7. Duplication:
None.
8. Alternatives:
The department did not consider any alternatives to the changes in the muzzleloading seasons in the Northern Zone because the proposal is needed to meet deer population management needs.
9. Federal standards:
There are no federal standards associated with this rule making.
10. Compliance schedule:
Hunters will need to comply with the new regulations during the 2009-2010 hunting seasons.

Regulatory Flexibility Analysis

The Department of Environmental Conservation (department) has determined that the proposed amendments to the late muzzleloader season for deer hunting in the Northern Zone will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. All reporting or record-keeping requirements associated with hunting are administered by the department. Therefore, the department has concluded that a regulatory flexibility analysis is not needed.

Rural Area Flexibility Analysis

The Department of Environmental Conservation (department) has determined that the proposed amendments to the late muzzleloader season for deer hunting in the Northern Zone will not impose any adverse impact on rural areas or reporting, record keeping, or other compliance requirements on public or private entities in rural areas. All reporting or record-keeping requirements associated with hunting are administered by the department. Therefore, the department has concluded that a regulatory flexibility analysis is not needed.

Job Impact Statement

The Department of Environmental Conservation (department) has determined that the proposed amendments to the late muzzleloader season for deer hunting in the Northern Zone will have no direct effect on jobs or employment. Therefore, the department has concluded that a job impact statement is not needed.

Environmental Facilities Corporation

EMERGENCY RULE MAKING

Proposed Regulations are for the CWSRF Co-Administered by EFC and the NYS Department of Environmental Conservation (DEC)

I.D. No. EFC-30-09-00008-E

Filing No. 815

Filing Date: 2009-07-13

Effective Date: 2009-07-13

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

Action taken: Amendment of Part 2602 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1284(5) and 1285-j(4)

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

Specific reasons underlying the finding of necessity: The New York State Environmental Facilities Corporation ("EFC") has determined that the attached amendment to the Clean Water State Revolving Fund (SRF) Regulations, Part 2602 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is in the public interest and necessary for the preservation of the general welfare throughout the State of New York and that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act ("SAPA"), effective immediately upon filing with the Department of State.

This amendment has been adopted as an emergency measure as it is in

the public interest to expeditiously use funds made available pursuant to the American Recovery and Reinvestment Act of 2009, P.L. 111-5, Title VII, Environmental Protection Agency, State and Tribal Assistance Grants ("ARRA") to create jobs and stimulate the economy and thus, time is of the essence. The immediate promulgation and adoption of these amended regulations is necessary for the protection and preservation of life, health, property and natural resources due to the severe economic downturn, the possible destabilization of State and local government budgets, the prospect of reduction of essential services and counterproductive local tax increases which will exacerbate the current economic conditions. The expected duration of such emergency is expected to last through the 90-day emergency time period and any subsequent 60-day extension of such emergency period while EFC concludes formal rulemaking procedures for the amended regulations. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the State Revolving Fund ("SRF") to obtain ARRA funds and provide the same to SRF applicants. In order to meet the tight timeframes of ARRA, these regulations need to be adopted expeditiously. Therefore, compliance with the rule making requirements of section 202(1) of the APA would be contrary to the public interest and, as such, the current circumstance necessitates that the public and interested parties be given less than the minimum period for notice and comment provided for in section 202(1) of SAPA.

These revisions conform the current SRF regulations with the requirements and objectives set forth in the ARRA, which are to preserve and create jobs, promote economic recovery and invest in environmental protection and to provide short and long-term economic benefits.

ARRA requires that SRF funds be provided to projects on a State's intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA. Further, the Environmental Protection Agency Administrator is directed to reallocate funds where projects are not under contract or construction within 12 months of the date of enactment of ARRA.

In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to fund these types of projects.

With the downturn in the financial markets, residents have seen a dramatic decrease in home values as well as in other assets. Through out the State, businesses are retrenching and closing shop. Home foreclosure rates in the State have increased. State unemployment levels have risen to 8.2 percent as of May, 2009.

The need to address clean water infrastructure and to reduce operational costs has become more pressing as the economy trends downwards. Compliance with ARRA requirements will provide additional Federal funds to accomplish these purposes.

A potential stimulus package was widely discussed and broadcast on all major networks, television, radio, newspapers and on the web. The details and adoption of ARRA were similarly widely disseminated, as well as the State's interest in utilizing such funds.

The adoption of these emergency regulations is consistent with EFC's statutory mission, which is to provide financial assistance for essential environmental infrastructure projects for the benefit of the people of New York State.

Subject: The proposed regulations are for the CWSRF co-administered by EFC and the NYS Department of Environmental Conservation (DEC).

Purpose: To set forth rules implementing the statutory provisions of the American Recovery and Reinvestment Act of 2009 (ARRA) P.L. 111-5.

Substance of emergency rule: I. SUBJECT:

The proposed revised regulations are for the New York State Clean Water Revolving Fund ("CWSRF"), Section 1285-j of the Public Authorities Law ("PAL"), co-administered by the New York State Environmental Facilities Corporation ("EFC") and the New York State Department of Environmental Conservation ("DEC"), pursuant to Chapter 565 of the Laws of 1989.

II. PURPOSE:

The proposed regulations set forth rules and procedures whereby EFC and DEC implement the requirements and objectives of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, Title VII, Environmental Protection Agency, State and Tribal Assistance Grants ("ARRA") to enable the State Revolving Fund ("SRF") to accept and expend Federal funds to stimulate the economy and retain and create jobs for the benefit of the people of the State.

Among the changes is an addition to the CWSRF Project Priority System ("PPS") for the purpose of including green infrastructure, water or energy efficiency improvements or other environmentally innovative activities as required by ARRA.

III. GENERAL SUBSTANCE:

It is proposed to amend the CWSRF regulations found within 21 NYCRR Part 2602 in the following manner (Companion regulations found within 6 NYCRR Part 649 will also be changed):

The proposed regulatory amendments serve to incorporate provisions required by or necessitated by ARRA. The term of additional subsidization in the form of forgiveness of principal, a negative interest loan or a grant is added to allow the SRF to provide principal forgiveness or grants, as required by ARRA. Modifications are made to provide flexibility in certain financial terms and products to meet the objectives of ARRA to stimulate the economy and help initiate projects. In addition, the definition of project is expanded to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The proposed amendments will also permit financing of pre-design planning costs prior to completion to further stimulate project development. The proposed amendments will also add school district and soil and water conservation district to the definition of recipient. The provisions regarding project bypassing are also clarified to meet the objectives of ARRA as to project readiness. The proposed regulations will also clarify disbursements and that if certain requirements, including those mandated by ARRA, are not met that the SRF may decline to disburse funds, and if released, recover said funds. Similarly, the remedies provisions are clarified.

Certain definitions are amended within the regulations to expand the types of financial products available. It is proposed to add a new definition of "direct interest rate" and other definitions be modified to allow the SRF to address current and changing market conditions. The hardship assistance program is set out in a new section, and simplified, and clarified to indicate that in the event of a shared municipal project, hardship eligibility will be based upon a municipality's allocable portion of the shared project.

Section 2602.3(a) of EFC's proposed new regulations regarding the PPS make a cross reference to the PPS contained in Section 649.12 of DEC's regulations. It is proposed that the PPS be expanded to include a new category (Category G) for green infrastructure, water or energy efficiency improvements or other environmentally innovative activities in order to meet the objectives of the ARRA.

The proposed regulations provide for an annual allocation for Category G, including a project funding cap, to be determined annually by the Commissioner and described in the IUP. Through these changes, CWSRF funds may be made available to a variety of recipients (public and private) carrying out green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

In addition, there are proposed administrative-oriented changes to EFC's regulations. The following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: "Interest rate subsidy", "Leveraged financing", "Market rate of interest", and "Reduced interest rate." Grammatical changes will include the consistent use of capitalized terms, such as "Corporation", "Department", "Commissioner", "Comptroller" and "Administrator" and use of the acronym "Clean Water" Revolving Fund instead of "Water Pollution Control" Revolving Fund.

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 October 10, 2009.

Text of rule and any required statements and analyses may be obtained from: Judith A. Avent, Esq., Deputy General Counsel, New York State Environmental Facilities Corporation, 625 Broadway, 7th Floor, Albany, New York 12207-2997, (518) 402-6969, email: avent@nysefc.org

Regulatory Impact Statement

1. STATUTORY AUTHORITY

When the Legislature enacted Chapter 565 of the Laws of 1989, it created the New York State Clean Water Revolving Fund ("CWSRF") and, in part, amended the State's Public Authorities Law ("PAL"), creating Section 1285-j, which sets forth the provisions of the CWSRF. Under Section 1285 of the PAL, the New York State Environmental Facilities Corporation ("EFC") is given the statutory authority to administer the CWSRF. Pursuant to Section 1285-j(4), the Legislature provided that "moneys in the water pollution control revolving fund shall be applied by the corporation to provide financial assistance to municipalities for construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner, for such other purposes permitted by the Federal Water Pollution Control Act, as amended...."

PAL Section 1284, which sets forth the general powers of the corporation, provides that EFC has the power "...to make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title...."

PAL Section 1284(5). In addition, the Federal Clean Water Act of 1986 ("CWA") provided for the establishment, by each state, of a revolving fund, for certain identified water pollution control projects. During the last year, the economy has weakened significantly and the American Recovery and Reinvestment Act of 2009, P.L. 111-5, Title VII, Environmental Protection Agency, State and Tribal Assistance Grants ("ARRA") was signed into law amending the CWA in an effort to stimulate the economy through building environmental infrastructure.

2. LEGISLATIVE OBJECTIVES

In creating the CWSRF under the PAL, the Legislature directed EFC and the Department of Environmental Conservation ("DEC") to provide assistance in support of the planning, development and construction of municipal water pollution control projects and other types of projects permitted by the CWA. ARRA provides federal funds through the CWSRF to create and retain jobs, to stimulate the economy and to promote green infrastructure. EFC and DEC are amending the CWSRF regulations in order to comply with the objectives and requirements of ARRA in order to accept and utilize these Federal funds for projects within New York State. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the SRF to obtain ARRA funds and provide the same to CWSRF applicants.

These revisions conform the current CWSRF regulations with the requirements set forth in the ARRA to more effectively carry out the legislative objectives, which are to preserve and create jobs, promote economic recovery, invest in environmental protection and to provide short and long-term economic benefits. ARRA requires that SRF funds be provided to projects on a State's intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA.

In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to provide the same.

The proposed regulations amend the CWSRF regulations found in 21 NYCRR Part 2602 and, as appropriate, the 6 NYCRR Part 649 companion regulations of DEC to: (i) add a new definition of "additional subsidization" that will allow the provision of forgiveness of principal, a negative interest loan or a grant, as either financial assistance or hardship assistance; (ii) amend the definition for "project" to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities; (iii) expand the CWSRF Project Priority System ("PPS") to include a new category (Category G) for green infrastructure projects allowed under the ARRA and CWA; (iv) permit financing of pre-design planning costs prior to completion to further stimulate project development; (v) clarify provisions regarding project bypassing to meet the objectives of ARRA as to project readiness; and (vi) other administrative-oriented changes, including the changing of various definitions in the regulations for purposes of increasing flexibility in CWSRF financial terms and products to address current market conditions and meet the objectives of ARRA to stimulate the economy and help initiate projects.

3. NEEDS AND BENEFITS

As set forth above, PAL Section 1284(5), gives EFC the authority to make and alter regulations to fulfill its purposes under its enabling statutes. PAL Section 1285-(j)(4) gives EFC the power to provide assistance for such other purposes permitted by the CWA, as amended. Compliance with ARRA objectives and requirements will provide substantial additional Federal funds to the CWSRF to construct eligible clean water infrastructure projects and to reduce operational costs.

The proposed regulations allow for CWSRF funding to be extended to green infrastructure, water or energy efficiency improvements or other environmentally innovative activities projects, and in the form of forgiveness of principal, a negative interest loan or a grant as set forth in the Intended Use Plan (IUP). Other provisions will allow EFC to bypass projects based upon project readiness to meet the requirements of ARRA and address changing market conditions through the provision of additional financial products as well as providing funds for pre-design planning prior to completion in order to facilitate project initiation. These changes will provide greater access to funding for CWSRF recipients and stimulate environmental projects.

The use of ARRA funds in New York State will create and retain jobs,

and stimulate the construction of critical environmental infrastructure throughout New York State.

With the changes outlined above being made to the current CWSRF regulations, a clean up of the regulatory definitions will need to be done to reflect these changes. For example, the following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: "Interest rate subsidy", "Leveraged financing", "Market rate of interest", and "Reduced interest rate."

4. COSTS

Participation in the CWSRF program is voluntary. The proposed amendments will not result in any additional costs to recipients other than those with respect to meeting ARRA requirements.

5. LOCAL GOVERNMENT MANDATES

None. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would be responsible for compiling the documentation necessary to submit a complete application to EFC for its consideration and review, and meet the requirements of ARRA.

6. PAPERWORK

The proposed amendments do not require any additional paperwork. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would have to submit the documentation required for a complete application to EFC for its consideration, and meet the reporting requirements of ARRA.

7. DUPLICATION

The proposed amendments to 21 NYCRR Part 2602 will be consistent, as applicable, with the DEC CWSRF regulations found in 6 NYCRR Part 649.

8. ALTERNATIVES

Upon review of the current regulations and the programmatic changes sought to be implemented, the proposal outlined above is the most efficient means by which the CWSRF regulations can be updated and the programmatic changes implemented.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal government standards.

10. COMPLIANCE SCHEDULE

There is no relevant compliance schedule to consider with respect to the rule. However, ARRA imposes specific requirements including project readiness in order for a project to qualify for funding.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

Small businesses and local governments throughout New York State will be affected in a positive manner as a result of the promulgation of this rule. The American Recovery and Reinvestment Act of 2009, P.L. 111-5, Title VII, Environmental Protection Agency, State and Tribal Assistance Grants ("ARRA") will provide over \$432 million dollars in additional funding for New York State Clean Water State Revolving Fund ("CWSRF") projects, including sewage treatment works, sewage collection systems and solid waste disposal facilities. In addition, ARRA mandates that at least twenty percent of the funds be distributed for green infrastructure projects, water or energy efficiency or other environmentally innovative activities.

The infusion of these CWSRF funds into the New York State economy will preserve and create a significant number of jobs, primarily via funding for water pollution control construction projects. This will have commensurate positive effect on small businesses and consultants involved in the construction of environmental infrastructure projects, in particular engineering firms, financial consulting firms and attorneys. Small businesses are actively involved in the clean water construction industry in New York State. The rule will also expand the types of projects eligible to receive funding under the CWSRF to include green infrastructure projects, thereby creating additional opportunities for small businesses engaged in these types of projects. This will in turn provide an economic stimulus to localities, including additional tax revenues for local governments.

The types of local governments to be affected by this rule may include cities, towns, villages, and counties throughout New York State as they are considered eligible borrowers under the CWSRF. This rule will have a positive effect on local governments which maintain their own engineering and/or public works departments and are primarily responsible for the engineering, planning, design and construction of clean water projects. This additional funding will allow such local governments to preserve and create jobs in connection with these types of projects.

2. COMPLIANCE REQUIREMENTS

Participation in the CWSRF by small businesses and local governments is entirely voluntary. Any reporting or recordkeeping imposed by this rule would solely be the result of their decision to participate in the CWSRF program. Such participation would require compliance with existing

CWSRF reporting and recordkeeping requirements and any reporting and recordkeeping requirements imposed by the ARRA.

3. PROFESSIONAL SERVICES

Small businesses and local governments who voluntarily participate in the CWSRF program may need to retain professional services for green infrastructure projects to be authorized under the proposed rule. Otherwise, no new professional services will be required by this rule.

4. COMPLIANCE COSTS

No initial capital costs will be incurred by a regulated business or industry or local government to comply with the rule. Initial or continuing compliance costs for reporting and recordkeeping should not vary depending on the size of such small business or local government. However, these reporting and recordkeeping requirements for small businesses and local governments will vary depending on the type, size and complexity of the project and the number of applicable local, state and federal approvals required. These initial or continuing compliance costs, however, only occur when the small business or local government voluntarily elects to participate in the CWSRF program.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

There are no anticipated economic or technological feasibility compliance requirements on small businesses or local governments as a result of this rule. The purpose of this rule is to provide funds to stimulate the economy of the New York State, to preserve and protect jobs and to stabilize local tax bases. Participation in the CWSRF program is entirely voluntary and any direct or indirect compliance requirements will result from small businesses and local governments applying for and seeking CWSRF assistance.

6. MINIMIZING ADVERSE IMPACT

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the ARRA, which are to preserve and create jobs, to promote economic recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in essential services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation ("EFC") considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-b(1). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Rulemaking and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate business councils, trade groups or other associations which represent small businesses and local governments to ensure that small businesses and local governments will be given an opportunity to participate in the rulemaking process.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The proposed rule will affect all types of rural areas throughout all of New York State, particularly those in need of sewage treatment facilities, sewage collection facilities, solid waste disposal facilities and other eligible Clean Water State Revolving Fund ("CWSRF") projects.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

Participation in the CWSRF by any recipient within a rural area is entirely voluntary. Any reporting, recordkeeping or other compliance requirements would solely be the result of their deciding to participate in the CWSRF program. Such participation would require compliance with existing CWSRF reporting and recordkeeping requirements and any reporting and recordkeeping requirements imposed by the American Recovery and Reinvestment Act of 2009, P.L. 111-5, Title VII, Environmental Protection Agency, State and Tribal Assistance Grants ("ARRA"). However, the provisions of the proposed rule, in and of themselves, will not require any additional reporting or recordkeeping by rural areas.

3. COSTS

No initial capital or annual costs will be incurred by public or private entities in rural areas as a result of this rule. Initial capital costs and any annual costs to comply with the rule will vary depending upon the size and complexity of the project and the number of applicable local, state and federal approvals required. However, any initial capital or annual compliance costs occur only when public or private entities in rural areas voluntarily elect to participate in the CWSRF program.

4. MINIMIZING ADVERSE IMPACT

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the

ARRA, which are to preserve and create jobs, to promote economic recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in essential services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation (“EFC”) considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-bb(7). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

5. RURAL AREA PARTICIPATION

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Adoption and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate organizations and other associations which represent rural areas to ensure that public and private entities will be given an opportunity to participate in the rulemaking process.

Job Impact Statement

1. NATURE OF IMPACT

The rule will have a positive impact on jobs and employment opportunities. A primary goal of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, Title VII, Environmental Protection Agency, State and Tribal Assistance Grants (“ARRA”) is job preservation and creation. The infusion of over \$432 million dollars into the New York State Clean Water State Revolving Fund (“CWSRF”) will preserve and create a significant number of jobs, in particular those involving construction of sewage collection systems, sewage treatment works and solid waste disposal facilities. The rule will also provide jobs and employment opportunities for consultants involved with CWSRF projects, including engineers, attorneys and financial advisors. The rule will also create additional job opportunities for private and public entities interested in green infrastructure, water or efficiency improvements or other environmentally innovative activities.

2. CATEGORIES AND NUMBERS AFFECTED

The categories of jobs most directly affected will be those of engineers, attorneys, financial advisors and construction related trades in the planning, design, construction and the obtaining of the necessary government permits and approvals regarding these projects.

3. REGIONS OF ADVERSE IMPACT

None. This rule will have a positive impact on jobs and employment opportunities throughout all regions of New York State.

4. MINIMIZING ADVERSE IMPACT

The provisions of the rule will have no unnecessary adverse impacts on existing jobs, but will promote the development of new employment opportunities. Therefore, no measures to minimize adverse impacts needed to be taken.

5. SELF-EMPLOYMENT OPPORTUNITIES

The proposed rule will have a positive effect on self-employment opportunities related to the construction field and consultants therein.

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

Subject: Criminal History Record Check.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-41-08-00005-P, Issue of October 8, 2008. The emergency rule will expire September 11, 2009.

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

Regulatory Impact Statement

Statutory Authority:

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

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

Legislative Objectives:

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

Needs and Benefits:

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

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-41-08-00005-E

Filing No. 817

Filing Date: 2009-07-14

Effective Date: 2009-07-14

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

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

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

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

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

tory check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

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

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

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

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

COSTS:

Costs to State Government:

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

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

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

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation,

claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

Costs to Local Governments:

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

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

Costs to Private Regulated Parties:

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

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

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

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Small Business Guide:

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

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

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

services agencies would therefore be considered “small businesses,” and would be subject to this regulation.

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

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

Economic and Technological Feasibility:

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

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

Minimizing Adverse Impact:

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

Small Businesses and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect of Rule:

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

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chemung	Livingston	Seneca

Chenango	Madison	Steuben
Clinton	Montgomery	Sullivan
Columbia	Ontario	Tioga
Cortland	Orleans	Tompkins
Delaware	Oswego	Ulster
Essex	Otsego	Warren
Franklin	Putnam	Washington
Fulton	Rensselaer	Wayne
Genesee	St. Lawrence	Wyoming
Greene	Saratoga	Yates

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

Job Impact Statement

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

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

Assessment of Public Comment

The agency received no public comment.

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

Emergency and Cardiac Services

I.D. No. HLT-30-09-00020-P

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

Proposed Action: Amendment of sections 405.19, 405.22 and 405.29 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Emergency and cardiac services.

Purpose: To update the cardiac provisions to reflect current practice.

Summary of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): This amendment to Title 10 of the Official Code of Rules and Regulations of the State of New York amends Section 405.19 by establishing updated minimum standards for Hospital Emergency Services particularly as they relate to patients with Acute Myocardial Infarction (AMI), repeals Subdivisions (d) and (e) of Section 405.22 (Critical Care specific to Cardiac Surgery and Diagnostic Cardiac Catheterization Services), and adds a new section 405.29 establishing updated minimum hospital standards for Cardiac Surgery and Cardiac Catheterization Center Services.

Section 405.19(a)(2) is amended by adding a requirement that hospitals without an organized emergency service must have a written agreement with local emergency medical services (EMS) to accommodate the need for timely inter-hospital transfer 24 hours a day and 365 days a year.

Section 405.19(b)(1) is amended to require hospitals with organized emergency services to include in their policies and procedures a written agreement with one or more local EMS to accommodate the need for timely inter-facility transport 24 hours a day and 365 days a year.

Section 405.19(e)(2) is amended to add the term 'and transfer' to existing standards requiring that patients arriving at the emergency service for care are promptly examined, diagnosed and appropriately treated in accordance with triage 'and transfer' policies.

Section 405.19(e)(3) is amended to add the term 'and treatment' to existing standards requiring that hospitals with limited capability for receiving and treating patients in need of specialized care develop standard descriptions of such patients and have triage 'and treatment' protocols and written transfer agreements with hospitals that are designated to be able to provide definitive care for such patients. The amendment also adds AMI patients, including but not limited to ST elevation AMI, to the list of conditions in need of specialized emergency care.

Section 405.19(f) is amended by renumbering the paragraph and subparagraphs describing requirements for integration of emergency services quality assurance with hospital wide quality assurance, and adding a new paragraph specifying that hospitals should also collaborate in the quality improvement programs of their local EMS to review pre-hospital care issues including review of specific patient cases.

Section 405.22 is amended to repeal Subdivisions (d) and (e), and subdivisions f,g,h,i,j,k, and l are relettered d,e,f,g,h,i, and j.

A new section 405.29, 'Cardiac Services', is added to replace existing sections 405.22(d) and 405.22(e). This revision provides a consolidation of hospital operational standards relating to cardiac services in one section of the code, updates existing definitions and minimum standards for cardiac surgery and Diagnostic Cardiac Catheterization Service, and adds definitions and minimum standards for PCI Capable Cardiac Catheterization Laboratory Centers and Electrophysiology (EP) Laboratory Programs.

Section 405.29(a) provides definitions for adult patient, pediatric patient, Cardiac Surgery Center, Cardiac Catheterization Laboratory Center (including PCI Capable Cardiac Catheterization Laboratory Center, Diagnostic Cardiac Catheterization Service, Cardiac EP Laboratory Program, Pediatric Cardiac Catheterization Laboratory Center), and the Cardiac Reporting System. These definitions also redefine pediatric from patients under the age of 21 in the existing regulation to a patient who has not reached their 18th birthday at the time of admission to the hospital.

Section 405.29(b) specifies that there shall be a Commissioner appointed State Cardiac Advisory Committee comprised of physicians and other professionals with expertise in cardiac care that shall, at the request of the Commissioner, consider any matter relating to Cardiac Services.

Section 405.29(c) enumerates general provisions for hospitals approved to provide cardiac services, includes a requirement that hospitals providing such services must comply with standards for critical care services set forth in subdivision 405.22(a), and specifies that:

- Inactivity in a program for a period of 6 months may result in probationary status or withdrawal of approval as a Cardiac Surgery Center and or a Cardiac Catheterization Laboratory Center. 405.29(c)(5)(i)

- Written notification, including a closure plan acceptable to the Department is required at least 60 days prior to voluntary discontinuance of a Cardiac Surgery Center or Cardiac Catheterization Laboratory Center service. 405.29(c)(5)(ii)

- Notification to the Department of significant changes in the provision of services is required within 7 days of the change. 405.29(c)(6)

- As part of Quality Assurance, all Cardiac Catheterization Laboratory Centers located in a hospital with no cardiac surgery on site must enter into and comply with a fully executed written agreement with a New York State Cardiac Surgery Center. The agreement must provide for representatives from the affiliate Cardiac Surgery Center to participate in a broad range of quality of care monitoring at the non-Cardiac Surgery Center; for a telemedicine link between the Cardiac Catheterization Laboratory Center and the Cardiac Surgery Center for off-site review of digital studies and timely treatment consultation; the Cardiac Surgery Center's involvement in developing privileging criteria; ongoing review of patient selection criteria and implementation of those criteria to include a review of the appropriateness of treatment for a selection of cases; a pre-procedure risk stratification tool that ensures that high risk and or complex cases are treated at a center with cardiac surgery on-site; procedures to provide for appropriate transfer of patients between facilities; and an agreement to jointly sponsor and conduct annual studies of the impact that the Cardiac Catheterization Laboratory Center has on costs and access to cardiac services in the hospital's service area. 405.29(c)(8)(i)

- Cardiac Surgery Center reviews conducted by the Department will include review of the quality of services the Center has provided to each of the Cardiac Catheterization Laboratory Centers with which it has a written agreement. 405.29(c)(8)(ii)

- Cardiac Surgery Centers with one or more affiliate Cardiac Catheterization Laboratory Centers are required to provide professional education designed to update and enhance staff knowledge and familiarity with relevant procedures and technological advances for staff of the off-site center(s). 405.29(c)(8)(iii)

- Hospitals must have written policies and procedures clearly delineating medical equipment vendor activities in the hospital including restrictions on vendor participation in clinical services. 405.29(c)(8)(9)

- Cardiac Surgery Centers shall be approved as PCI Capable Cardiac Catheterization Laboratory Centers without a separate CON approval. 405.29(c)(10)

- Cardiac catheterization services approved prior to July 1, 2009 to perform percutaneous coronary interventions with no cardiac surgery on site may operate as PCI Capable Cardiac Catheterization Laboratory Centers without a CON approval. 405.29(c)(11)

- Cardiac catheterization services approved prior to July 1, 2009 to perform cardiac electrophysiology procedures may be approved to operate as Cardiac EP Laboratory Programs without a CON approval. 405.29(c)(12)

Section 405.29(d) sets forth minimum standards specific to Cardiac Surgery Centers including requirements for direction, structure and service requirements, staffing, patient selection criteria and minimum workload standards. Major updates and additions to the existing requirements include:

- 405.29(d)(2)(iii)(c) specifies requirements for post procedure availability of a cardiac surgeon.

- 405.29(d)(2)(iii)(d) requires written documentation of a triage protocol including identification of specific responsibilities in the event that a patient must be returned on an emergency basis to the operating room.

- 405.29(d)(2)(iii)(h) requires that the hospital attempt to determine and document the status of each patient at 30 days post operatively for those who are no longer inpatients and throughout the hospital stay for those who are discharged from the cardiac surgery service to another service within the hospital.

- 405.29(d)(3)(i)(a) requires cardiothoracic surgeons in sufficient numbers to meet the needs of the patients and each of whom performs a minimum of 50 cardiac surgeries a year, with formal review for physicians with annual volumes below minimum volume standards.

- 405.29(d)(3)(iii) specifies that Nurse Practitioners, Advanced Practice Nurses and or Registered Physicians Assistants may be utilized when these specialists are appropriately credentialed and privileged on the medical staff.

- 405.29(d)(3)(v) requires a data manager who has special training in the clinical criteria used in the Cardiac Reporting System and who is authorized and shall work in collaboration with the physician director to ensure accurate and timely reporting of data to the Department.

- 405.29(d)(4)(iii) specifies that the hospital shall not admit patients for cardiac surgery under the age of 18 unless the hospital is approved as a Pediatric Cardiac Surgery Center or unless the patient's diagnosis indicates a condition, such as acquired heart disease, that can be most appropriately treated at an adult program with pediatric trained personnel and documentation of consultation with a pediatric cardiologist.

• 405.29(d)(4)(iv) specifies that Pediatric Cardiac Surgery Centers that are not also approved as Adult Cardiac Surgery Centers shall not admit patients over the age of 18 for cardiac surgery unless the procedure will be performed to treat a congenital anomaly and the hospital can meet the additional needs of the patient.

• 405.29(d)(5)(ii) requires a minimum volume of 75 procedures a year for Pediatric Cardiac Surgery Centers, and allows for two or more hospitals to join in a coordinated program, approved by the Commissioner, in which at least one program performs a minimum of 75 cases a year and the total volume for the coordinated program is at least 100 cases a year.

Section 405.29(e) sets forth minimum standards specific to Cardiac Catheterization Laboratory Centers including requirements for direction, structure and service requirements, staffing, patient selection criteria and minimum workload standards. Major updates and additions to the existing requirements include:

• 405.29(e)(1)(vi)(a) specifies that the hospital shall not admit patients under the age of 18 for a cardiac laboratory procedure unless the hospital is approved as a Pediatric Cardiac Catheterization Laboratory Center or unless the patient's diagnosis indicates a condition, such as acquired heart disease, that can be most appropriately treated at an adult program with pediatric trained personnel and pediatric consultative services.

• 405.29(e)(1)(vi)(b) specifies that Pediatric Cardiac Catheterization Laboratory Centers that are not also approved as Adult Cardiac Catheterization Laboratory Centers shall not admit patients over the age of 18 for a cardiac laboratory procedure unless the procedure will be performed to treat a congenital anomaly and the hospital can meet the additional needs of the patient.

• 405.29(e)(1)(vi)(c) specifies that a hospital shall not admit adult patients for PCI unless it is an approved PCI Capable Cardiac Catheterization Laboratory Center.

• 405.29(e)(1)(vi)(d) specifies that a hospital shall not provide cardiac EP Laboratory services unless it is an approved Cardiac EP Laboratory Program.

• 405.29(e)(2)(i)(b) specifies that PCI Capable Cardiac Catheterization Laboratory Centers must maintain capability to perform emergency PCI, including but not limited to PCI for the treatment of ST elevation myocardial infarction (STEMI) on a 24/7/365 basis.

• 405.29(e)(2)(ii)(b) requires a minimum of 3 interventional cardiologists at PCI Capable Cardiac Catheterization Centers, each of whom performs a minimum of 75 PCI total cases a year of which at least 11 are emergency PCI cases, with formal review for physicians with volume below minimum volume standards.

• 405.29(e)(2)(ii)(c) requires a data manager at PCI Capable Cardiac Catheterization Centers for reporting of Cardiac Reporting System data to the Department.

• 405.29(e)(2)(iv) specifies a minimum annual volume of 150 PCI cases a year including at least 36 emergency PCI cases at each PCI Capable Cardiac Catheterization Center, and sets forth specific oversight criteria for centers with volume below 400 cases a year, and specifies that minimum volume standards are site specific and cannot be combined with other approved sites for purposes of achieving minimum workload standards.

• 405.29(e)(3) specifies that no new Diagnostic Cardiac Catheterization Services shall be approved and specifies that Diagnostic Cardiac Catheterization Services are not approved to perform PCI or cardiac surgery.

• 405.29(e)(4)(i) limits Pediatric Cardiac Catheterization Laboratory Centers to hospitals approved as Pediatric Cardiac Surgery Centers.

• 405.29(e)(4)(ii) specifies standards for availability of a pediatric cardiac surgeon during and after any interventional pediatric cardiac catheterization procedure.

• 405.29(e)(5) specifies structure and service requirements, staffing, and patient selection criteria specific to Cardiac EP Laboratory Programs. It limits the types of conditions that can be treated at an EP program with no cardiac surgery on site, and allows for patients between the ages of 12 and 18 to be treated at an EP program with adult, but not pediatric, cardiac surgery on-site when pediatric trained personnel and consultative services are available to meet the needs of the patient.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 2800 and 2803 (2). PHL Article 28 (Hospitals), Section 2800 specifies that "Hospital and related services

including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

Title 10 Health Codes Rules and Regulations (10NYCRR) Part 405 governs hospital minimum standards, including hospital emergency services (at section 405.19) and standards for hospitals approved to perform specialized procedures used in the diagnosis and treatment of heart disease (at section 405.22). These sections need to be updated to reflect current practice.

Specialty cardiac care, while specified in section 405.22 under critical and specialty services, is currently not included in the specialized emergency care provisions in Section 405.19 that would invoke a triage and transfer protocol for hospitals with limited capacity for receiving and treating patients. Evidence documenting the importance of rapid and special treatment for ST elevation myocardial infarction (a subset of myocardial infarction referred to as STEMI) is now conclusive. It is clear that many lives can be saved each year by treating patients in the early stages of a STEMI with a Percutaneous Coronary Intervention (PCI) procedure (also commonly referred to as angioplasty, balloon angioplasty or stenting) when the procedure is performed at a hospital with extensive experience in treating myocardial infarction patients. As PCI procedures are not available at all hospitals, it is essential that non-PCI Capable Cardiac Catheterization Laboratory Center hospitals have protocols in place to appropriately identify and transport patients in need of this life saving procedure. Approximately 75% of patients with early symptoms of a myocardial infarction either self-transport or enlist family members to bring them to a local hospital rather than contact emergency medical services (EMS). This makes it critical that non-PCI-capable hospitals have protocols in place to identify a myocardial infarction in its various presentations and that they have transport relationships with PCI-capable hospitals to ensure the best of care for all myocardial infarction patients. Section 405.19 would be amended to require written agreements with local emergency medical services to accommodate the need for timely inter-hospital transport on a 24 hours a day, 7 days a week, 365 days a year basis. Section 405.19 would also be amended to include acute myocardial infarction patients in the list of patients in need of specialized care so that hospitals are required to develop and implement protocols and written transfer agreements to PCI-capable hospitals.

Critical care and special care services specific to cardiac surgical centers and cardiac diagnostic centers as set forth in Subdivisions (d) and (e) of Section 405.22 of Part 405 have not been updated since 1986. The many changes and advancements in the provision of cardiac care that have taken place since adoption and last amendment of these regulations have rendered them outdated and incomplete. Subdivisions (d) and (e) of Section 405.22 would be repealed and a new Section 405.29 entitled Cardiac Services would be added to address medical standards of care. This section would set forth criteria for hospitals that provide cardiac surgery, diagnostic cardiac catheterization services, interventional cardiac laboratory services including PCI and other percutaneous cardiac interventions, or cardiac electrophysiology.

One update that would be included in the regulation is to address PCI. PCI is now a widely used procedural intervention for the treatment of heart disease; in fact there are many more PCIs now performed each year than cardiac surgeries. PCI was still in its developmental stages when the existing regulations were developed. At that time, PCI procedures were provided only in the setting of a Cardiac Surgery Center and there are no PCI related criteria set forth in the current provisions.

Another related indication of the outdated status of the existing regulations is that while PCI, a procedure used to treat heart disease, is performed in cardiac catheterization laboratories, the term cardiac diagnostic centers

is used in Section 405.22 (e) to describe all cardiac catheterization laboratory activities. Also, there are currently no standards in Part 405 relating to the provision of electrophysiology (EP), a growing subspecialty in cardiology. EP procedures are now effectively used to identify and treat life threatening conditions in the electrical system of the heart. Such procedures are typically performed in a specially equipped cardiac laboratory that requires a specialized team of clinicians. In addition, age limits to delineate pediatric and adult cardiac patients, as well as the minimum volumes for cardiac surgery and cardiac catheterization, need to be established to be in keeping with current standards of care.

The proposed regulations also recognize various models used in the provision of Cardiac Catheterization Laboratory Center services, including hospitals that are part of an Article 28 network or multi-site facility and Cardiac Catheterization Laboratory Center services that are co-operated between two hospitals, and specify that minimum volume standards are site specific and cannot be combined with other approved sites for purposes of achieving minimum workload standards.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

This regulation will assure that all hospitals have in place protocols and procedures for transferring patients who present in a hospital emergency department with acute myocardial infarction, but cannot be treated appropriately onsite. This will improve patient safety and outcomes. The cost associated with revising existing agreements or implementing new ones will be minimal or non-existent.

For hospitals that are currently providing interventional cardiac procedures such as percutaneous coronary interventions, new costs for complying with these regulations will be minimal. The regulations are being updated to address current medical standards of care that are already in place at existing centers. Many of the standards contained in these regulations (including reporting requirements to the Cardiac Reporting System, requirements for 24 hour coverage for emergency PCI, and requirements for an affiliation agreement for Cardiac Catheterization Laboratory Centers with no cardiac surgery on-site) have been implemented through conditions placed on Certificate of Need approvals and through distribution of guidelines by the Department to existing centers.

For hospitals considering adding interventional cardiac procedures, costs of compliance should be considered. For example, the standard for maintaining 24 hour coverage for emergency PCI will require that arrangements be made for the 24 hour availability of an interventional cardiologist and team, and ongoing reporting data to the computer based Cardiac Reporting System will require staff trained and in place to perform that function. It is a voluntary choice for hospitals to add cardiac services and not a mandate.

There are approximately 55 hospitals that are currently PCI Capable Cardiac Catheterization Laboratory Center out of 228 hospitals. Hospitals without PCI capability will be required to transfer STEMI patients, where medically appropriate, from the emergency service to other hospitals for definitive cardiac care. Those non-PCI hospitals may see a decrease in their reimbursements. The percentage of such patients who will need to be transferred from such hospitals is small. Approximately 4 % of all chest pain patients are STEMI patients.

Cost to State and Local Government:

Any hospital in New York State that is part of State or local government that provides cardiac services will need to comply with these provisions. Costs for these hospitals will be the same as for any hospital providing these services in New York State.

This regulation will assure that all hospitals have in place protocols and procedures for transferring patients who present in a hospital emergency department with acute myocardial infarction, but cannot be treated appropriately onsite. This will improve patient safety and outcomes. The cost associated with revising existing agreements or implementing new ones will be minimal or non-existent.

Cost to the Department of Health:

The Department of Health will need to monitor and provide surveillance and oversight for the systems of care provided to patients pursuant to these regulations. It is not expected to incur any additional costs, as existing staff will be utilized to conduct such surveillance and oversight.

Local Government Mandates:

The proposed regulation requires hospitals to put in place agreements with local emergency medical services to allow for patient transfers to appropriate receiving hospitals on a 24/7 basis, to the extent that a hospital does not have the capability to treat a patient who presents in the emergency department. The regulation also adds acute myocardial infarction to the list of conditions which may require specialized emergency care and transfer agreements with hospitals that are designated as able to "provide definitive care for such patients." The requirement of an agreement with emergency medical services and the addition of a condition to the list of conditions subject to a transfer agreement may impose some costs on hospitals operated by county governments or municipalities. However,

since hospitals are currently required to transfer patients whose conditions cannot be appropriately treated on site to another hospital capable of providing definitive care, every hospital that has limited capability in providing emergency care should already have such agreements with a local EMS service and one or more receiving hospitals. Accordingly, we believe that this regulation may require no new action from public hospitals, and at most will require only revisions to existing agreements. As a result, this provision will have little, if any, cost impact.

Paperwork:

All hospitals, whether or not PCI Capable Cardiac Catheterization Laboratory Centers, will need to develop and implement written transfer agreements for sending and receiving patients with acute myocardial infarction including those requiring emergency PCI and develop policies and procedures as to how they will appropriately treat such patients and provide these services. Hospitals must also have agreements with local emergency medical services so inter-hospital transfers are available 24 hours a day and 365 days a year.

Cardiac Surgery Centers and Cardiac Catheterization Laboratory Centers will continue to be required to report data to the Department through the computer based Cardiac Reporting System. In addition, data deemed necessary by the Commissioner will continue to be required to be maintained for cardiac patients treated by the hospital and submitted upon request to the Department.

All Cardiac Catheterization Laboratory Centers located in a hospital with no cardiac surgery on-site will be required to enter into and comply with a fully executed written agreement with a New York State Cardiac Surgery Center covering a broad range of quality of care monitoring at the non-surgery center.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

The Department considered maintaining the current policy that limits PCI to approved Cardiac Surgery Centers. In order to facilitate access to timely PCI for STEMI patients, requirements will be implemented that allow PCI at non-surgery centers where the volume and standards associated with high quality care can be maintained.

Federal Requirements:

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

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a general hospital pursuant to PHL Section 2801 (10) will be required to comply. Small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule will include 3 hospitals.

Compliance Requirements:

The proposed regulation requires hospitals to put in place agreements with local emergency medical services to allow for patient transfers to appropriate receiving hospitals on a 24/7 basis, to the extent that a hospital does not have the capability to treat a patient who presents in the emergency department. The regulation also adds acute myocardial infarction to the list of conditions which may require specialized emergency care and transfer agreements with hospitals that are designated as able to "provide definitive care for such patients." The requirement of an agreement with emergency medical services and the addition of a condition to the list of conditions subject to a transfer agreement may impose some costs on hospitals operated by county governments or municipalities. However, since hospitals are currently required to transfer patients whose conditions cannot be appropriately treated on site to another hospital capable of providing definitive care, every hospital that has limited capability in providing emergency care should already have such agreements with a local EMS service and one or more receiving hospitals. Accordingly, we believe that this regulation may require no new action from small business and public hospitals, and at most will require only revisions to existing agreements. As a result, this provision will have little, if any, cost impact.

Professional Services:

None.

Compliance Costs:

This regulation will assure that all hospitals have in place protocols and procedures for transferring patients who present in a hospital emergency department with acute myocardial infarction, but cannot be treated appropriately onsite. This will improve patient safety and outcomes. The cost associated with revising existing agreements or implementing new ones will be minimal or non-existent.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

There is no adverse impact.

Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council (SHRPC) and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

Rural areas are defined as counties with a population of less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. All rural areas will be affected by this rule.

The following 43 counties have a population less than 200,000.

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

The following 10 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange
		Saratoga

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

None.

Costs:

None.

Minimizing adverse impact:

This regulation is designed to minimize adverse impact on patients living in rural areas by improving timely access to appropriate care.

Rural area participation:

Outreach to the affected parties is being conducted. They include general hospitals, county health departments and emergency medical services. Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council (SHRPC) and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Job Impact Statement

Nature of impact:

This rule is not expected to have a significant impact on jobs and employment opportunities. The intent is to promote effective and appropriate care for acute myocardial infarction patients. It is also intended to clarify standards for appropriately credentialed staff who provide services to cardiac patients. This proposal is necessary to update the current provisions to address medical standards of care. Most facilities already have appropriate staff to meet these requirements.

The 24-hour cardiac team availability requirements may require some hospitals to increase staff if they are seeking approval to perform PCI. It is not mandatory that all hospitals perform PCI.

Categories and numbers of jobs and employment opportunities affected:

This proposal is not expected to have any significant impact on jobs and employment activities.

Regions of adverse impact:

This rule will not impose a disproportionate or adverse impact on jobs and employment opportunities in any region in the State.

Minimizing adverse impact:

There is no adverse impact.

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

Cardiac Services Need Methodology

I.D. No. HLT-30-09-00021-P

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

Proposed Action: Amendment of section 709.14 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Cardiac services need methodology.

Purpose: To update the need methodology to reflect current practice.

Summary of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): This amendment to Title 10 of the Official Code of Rules and Regulations of the State of New York Section 709.14, which amends subdivisions (a) and (b), repeals Subdivisions (c) and (d) and replaces Subdivisions (c) and (d) with new subdivisions (c) and (d), updates the planning and need methodology for cardiac surgery and provides methodologies for determining need for PCI Capable Cardiac Catheterization Laboratory Centers, Cardiac Electrophysiology (EP) Laboratory Programs and Pediatric Cardiac Catheterization Laboratory Centers.

Section 709.14(a) is amended by updating terminology and adding a reference to percutaneous coronary interventions (PCI) in the statement of intent.

Section 709.14(b) - relating to Cardiac Surgery Centers is amended as follows:

- Section 709.14(b)(3) retains the existing need methodology and adds a requirement that annual volume projections include a projected annual volume of at least 300 PCI cases within two years of approval for facilities proposing to initiate an Adult Cardiac Surgery Center. (Cardiac Surgery Centers will be approved to provide Cardiac Surgery Center and PCI Capable Cardiac Catheterization Laboratory Center services as per 709.14(b)(9)).

- Section 709.14(b)(4) changes the Pediatric Cardiac Surgery Center services projected annual volume requirement from 100 to 200 pediatric cardiac surgical procedures per year. A provision is also added allowing for a facility demonstrating the ability to perform 50 cases a year and operate as part of a coordinated program with another pediatric Cardiac Surgery Center to be considered for approval.

- Section 709.14(b)(5)(ii) updates standards for Hospital Based Prevention Programs to reflect more recent thinking in Public Health, focuses efforts on inpatients with a principal diagnosis of ischemic heart disease, reduces tracking and follow up requirements, and retains the philosophy that hospitals approved to provide cardiac services carry a responsibility for stewardship in the area of prevention. Requirements include: treatment plans that include risk factor assessment and education for cardiac patients, professional education, heart health promotion and an administrative team.

- Section 709.14(b)(9) specifies that all hospitals approved as adult Cardiac Surgery Centers shall be approved as PCI Capable Cardiac Laboratory Centers and must meet the standards at 405.29(c), 405.29(e)(1) and 405.29(e)(2) of this Title and specifies that all hospitals approved as Pediatric Cardiac Surgery Centers shall be approved as Pediatric Cardiac Catheterization Laboratory Centers and must meet the standards at 405.29(c), 405.29(e)(1) and 405.29(e)(4) of this Title.

Subdivision (c) of Section 709.14 is repealed and a new 709.14(c) is added to provide a definition for Cardiac Catheterization Laboratory Centers and the categories of Cardiac Catheterization Laboratory Centers, including PCI Capable Cardiac Catheterization Laboratory Centers, Cardiac EP Laboratory Programs and Pediatric Cardiac Catheterization Laboratory Centers by referencing definitions in 405.29(a).

Subdivision (d) of Section 709.14 is repealed and a new 709.14(d) is added to provide a need methodology for Cardiac Catheterization Laboratory Centers.

- Section 709.14(d)(1)(i) specifies that applicants approved as Cardiac Surgery Centers are approved PCI Capable Cardiac Catheterization Laboratory Centers.

- Section 709.14(d)(1)(ii) provides the methodology to be used in determining need for PCI Capable Cardiac Catheterization Laboratory Centers at hospitals with no cardiac surgery on-site. Factors for determining need include:

o Evidence that existing centers cannot meet the needs of patients in need of emergency PCI due to conditions such as capacity, geography and or EMS limitations.

o Defines the planning area as the area within 1 hour average surface travel time of the applicant institution.

o Applicants must demonstrate the ability to provide high quality appropriate care with a minimum of 36 emergency PCI cases within the first year of operation and 200 cases within two years of start up and must demonstrate the ability to comply with standards at Section 405.29. Documentation in support of volume projections must include: discharge data indicating the number of patients with a diagnosis of acute MI and or other diagnoses associated with PCI, the number of doses of thrombolytic therapy ordered for acute MI patient in the applicant hospital's emergency department, and documentation of transfers to existing PCI Capable Cardiac Catheterization Laboratory Centers for PCI. Additional factors that may be considered are enumerated and include a provision specifying volume considerations for a Cardiac Catheterization Laboratory Center that is co-operated with an approved Cardiac Surgery Center.

o Applicants must demonstrate that the addition of the proposed program will not jeopardize the ability of existing centers to continue to meet minimum volume and quality expectations and that one of the following conditions exists: the applicant is greater than one hour from existing PCI sites or all existing PCI centers within an hour of the applicant perform at least 300 cases a year and are expected to continue to perform at that level after the addition of the proposed program.

o The applicant must submit a plan regarding initiatives in the area of access, outreach and continuity of care.

o A written, signed affiliation agreement with a New York State Cardiac Surgery Center is required in accordance with Section 405.29.

• Section 709.14(d)(2) provides the methodology to be used in determining need for Cardiac EP Laboratory Programs. Factors include:

o Applicant must be an approved PCI Capable Cardiac Catheterization Laboratory Center, an approved Diagnostic Cardiac Catheterization Laboratory Center, or be applying for EP in conjunction with an application to become a PCI center.

o Applicant must demonstrate ability to comply with standards at Section 405.29(e)(5) of this Title.

o Documentation of exiting referrals for cardiac electrophysiology patients treated by cardiologists on staff at the hospital must be submitted.

o Applicants from hospitals with no cardiac surgery on-site must submit a copy of the patient selection criteria.

o Hospitals approved as Cardiac Surgery Centers shall be deemed to have demonstrated public need for a Cardiac EP Laboratory Program.

• Section 709.14(d)(3) specifies that need for a Pediatric Cardiac Catheterization Laboratory Center shall be determined only in conjunction with an application for a Pediatric Cardiac Surgery Center.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 2800 and 2803 (2). PHL Article 28 (Hospitals), Section 2800 specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the Department of Health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803 (2) authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

Title 10 Health Codes Rules and Regulations (10 NYCRR) Section 709.14 provides standards to be used in evaluating certificate of need (CON) applications for cardiac catheterization laboratory and cardiac surgery services in NYS hospitals. When used in conjunction with 10 NYCRR Section 709.1 they are intended as a set of planning principles and decision making tools for directing the distribution of these services, with a goal of ensuring appropriate access to high quality services while avoiding the unnecessary duplication of resources.

Section 709.14 was last updated in January 1994. The many changes and advancements in the provision of cardiac care that have taken place since adoption and last amendment of these regulations have rendered them outdated and incomplete.

Currently, the most widely used procedural intervention for the treatment of coronary artery disease is Percutaneous Coronary Interventions (PCI); also commonly referred to as angioplasty or stenting. When the existing need regulations were developed, PCI was still a relatively new procedure, provided ONLY in the setting of a Cardiac Surgery Center. As such, approval to perform the procedure was considered part-and-parcel of the cardiac surgery need methodology, and no PCI specific standards were set forth in regulation.

Changes in cardiac care over the years also include recognition of the life saving capability of rapid PCI for patients in the early phases of a heart attack, and recognition that under carefully controlled circumstances, the procedure can be performed in facilities with no cardiac surgery on site (SOS). In addition, performing PCI in conjunction with a diagnostic catheterization (thereby saving a second catheterization lab procedure for patients identified with significant pathologies) is now relatively routine in PCI capable hospitals.

Similarly, intra-cardiac electrophysiology (EP) is a growing subspecialty in cardiology. EP procedures are now used to effectively identify and treat life threatening conditions in the electrical system of the heart such as rapid heart beat. They require a highly specialized team of clinicians. In 2006, approximately 14,200 diagnostic EPs, 9,000 Implantable Cardiac Defibrillator (ICD) procedures and 6,800 ablations were reported in EP labs across the state. While we have developed some guidelines over the years regarding minimum criteria for the provision of EP, there are currently no regulations governing the EP procedures.

These regulations, when enacted, will allow non-SOS cardiac laboratory hospitals that meet specific criteria to perform PCI. The number of hospitals initially involved in this change would be relatively small. As of June, 2007, there were 40 hospitals approved through the Certificate of Need (CON) process to perform diagnostic only cardiac catheterization. Twelve of those hospitals have waivers to perform PCI with no SOS.

The proposed regulatory changes will supersede existing guidelines and, once enacted, will provide a formal CON review mechanism.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

It is a voluntary choice for hospitals to provide these cardiac services and not a mandate. There are approximately 55 hospitals that are currently PCI Capable Cardiac Catheterization Laboratory Centers out of 228 hospitals.

The cost of implementation and compliance of these regulations is expected to be minimal for the affected entities already caring for these patients. Other companion regulations are being updated to reflect medical standards of care. Hospitals that choose to provide such services will need to adhere to the standards in the companion regulations (the medical standard of care), and may incur costs to upgrade their services. Hospitals approved as PCI Capable Cardiac Catheterization Laboratory Centers will be required to provide emergency PCI on a 24-hour, 7 day a week, 365 days a year basis. Hospitals approved as PCI Capable Cardiac Catheterization Laboratory Centers and hospitals approved as Cardiac Surgery Centers will be required to provide data to the Cardiac Reporting System as those who already provide this care do now.

Cost to State and Local Government:

Any hospital in New York State that is part of State or local government that chooses to provide cardiac services will need to comply with these provisions. Costs for these hospitals will be the same as for any hospital providing these services in New York State.

Cost to the Department of Health:

The Department of Health will need to monitor and provide surveillance and oversight for the system of care provided to these patients. It is not expected to incur any additional costs, as existing staff will be utilized to conduct such surveillance and oversight.

Local Government Mandates:

None.

Paperwork:

Hospitals seeking to provide Cardiac Catheterization Laboratory Center Services with no Cardiac surgery onsite will be required to maintain an affiliation agreement with an existing Cardiac Surgery Center. Cardiac

Surgery and Cardiac Catheterization Laboratory Centers will continue to be required to report data to the Department. Amendments to Section 709.14(b)(5)(ii) would reduce the work required for hospital based heart disease prevention programs by deleting portions of regulations that require follow-up and tracking of prevention services, particularly for outpatients.

Duplication:
This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:
The Department considered maintaining the current policy that limits PCI to approved Cardiac Surgery Centers. In order to facilitate access to timely PCI procedures, requirements will be implemented that allow PCI at non-surgery centers where the volume and standards associated with high quality care can be maintained.

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

Compliance Schedule:
This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:
Any facility defined as a general hospital pursuant to PHL Section 2801 (10) will be required to comply. Small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule will include 3 hospitals.

Compliance Requirements:
The hospitals that are considered a small business will be required to have written transfer agreements in place with hospitals that will be receiving cardiac patients and also with emergency medical services to transport these patients to the appropriate facility for definitive care in a timely and appropriate manner.

Professional Services:
None.

Compliance Costs:
None.

Economic and Technological Feasibility:
This proposal is economically and technically feasible.

Minimizing Adverse Impact:
There is no adverse impact.

Small Business and Local Government Participation:
Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council (SHRPC) and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:
Rural areas are defined as counties with a population of less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. All rural areas will be affected by this rule.

The following 43 counties have a population less than 200,000.

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

The following 10 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange
		Saratoga

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

None.
Costs:
None.

Minimizing Adverse Impact:
This regulation is designed to minimize adverse impact on patients living in rural areas by improving timely access to appropriate care.

Rural Area Participation:
Outreach to the affected parties is being conducted. They include general hospitals, county health departments and emergency medical services. Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council (SHRPC) and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Job Impact Statement

Nature of Impact:
This rule is not expected to have a significant impact on jobs and employment opportunities. The intent is to promote effective and appropriate care for acute myocardial infarction patients. It is also intended to clarify standards for appropriately credentialed staff who provide services to cardiac patients. This proposal is necessary to update the current provisions to address medical standards of care. Most facilities already have appropriate staff to meet these requirements.

The 24-hour cardiac team availability requirements may require some hospitals to increase staff if they are seeking approval to perform PCI. It is not mandatory that all hospitals perform PCI.

Categories and Numbers of Jobs and Employment Opportunities Affected:
This proposal is not expected to have any significant impact on jobs and employment activities.

Regions of Adverse Impact:
This rule will not impose a disproportionate or adverse impact on jobs and employment opportunities in any region in the State.

Minimizing Adverse Impact:
There is no adverse impact.

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

Certificate of Need Process for Cardiac Services

I.D. No. HLT-30-09-00022-P

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

Proposed Action: Amendment of section 710.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Certificate of need process for cardiac services.

Purpose: To align the certificate of need process in cardiac services.

Text of proposed rule: A new paragraph (5) of subdivision (b) of Section 710.1 is added to read as follows:

(5) For purposes of this Part, Cardiac Catheterization Laboratory Center, PCI Capable Cardiac Catheterization Laboratory Center, Diagnostic Cardiac Catheterization Service, and Cardiac Electrophysiology (EP) Laboratory Program shall have the same meanings as in section 405.29(a)(4) of this Title.

Subparagraph (iii) of paragraph (1) of subdivision (c) of Section 710.1 is amended as follows:

(1) Proposals requiring a certificate of need application. Any proposal which involves any of the following shall be the subject of an application submitted for review pursuant to the requirements of this Part and Article 28 of the Public Health Law:

- * * *
- (iii) the initial acquisition or addition of any equipment, regardless of cost, utilized in the provision of a service listed in paragraph (2) of this subdivision, other than the acquisition or addition of equipment subject to paragraph (7) of this subdivision. A proposal for the replacement of exist-

ing equipment, regardless of cost, which meets the criteria contained therein, shall not require an application but shall be processed pursuant to subparagraph (iii) of paragraph (4) of this subdivision;

Clause (b) of subparagraph (i) of paragraph (2) of subdivision (c) of Section 710.1 is amended as follows:

(b) any proposal for the addition, modification or change in the method of delivery of the following services, including the initial acquisition [or addition] of any equipment relating thereto, regardless of cost; [provided, however, that the addition of equipment utilized in the provision of the following services, except cardiac catheterization services, by a medical facility already approved to provide such service shall be eligible for administrative review pursuant to paragraph (3) of this subdivision;]

* * *
(2) [open heart] adult or pediatric cardiac surgery;

(3) cardiac catheterization, including the relocation of any Cardiac Catheterization Laboratory Center service within a network or to another site in a multi-site facility, as defined in Section 401.1 of this Title, and the addition of a PCI Capable Cardiac Catheterization Laboratory Center at a facility that is not already approved to provide cardiac catheterization services; provided however that the addition of a PCI Capable Cardiac Catheterization Laboratory Center or Cardiac EP Laboratory Program at a facility approved to provide cardiac catheterization services shall be reviewed pursuant to paragraph (3) of this subdivision, and the addition of a Cardiac EP Laboratory Program services at a facility approved to provide cardiac surgery shall be reviewed pursuant to paragraph (7) of this subdivision;

* * *
A new subparagraph (ii) of paragraph (2) of subdivision (c) of Section 710.1 is added and existing subparagraph (ii) is renumbered (iii) as follows:

(ii) The addition of equipment utilized in the provision of a service set forth in subparagraph (i) of this paragraph by a medical facility already approved to provide such service shall be reviewed as follows:

(a) The addition of equipment utilized in the provision of Cardiac Catheterization Laboratory Center services shall be eligible for limited review pursuant to paragraph (7) of this subdivision, to the extent that it does not otherwise require an administrative or a full review under this Part;

(b) The addition of equipment utilized in the provision of all other services set forth in subparagraph (i) shall be eligible for administrative review pursuant to paragraph (3) of this subdivision, to the extent that it does not otherwise require a full review under this Part;

[(ii)] (iii) For any application subject to full review for which the total basic cost of construction does not exceed \$10,000,000, the commissioner may, in lieu of requiring some or all of the architectural information and documentation required by this Part, accept a written certification by an architect or engineer licensed by the State of New York that such project complies with Part 711 of this Title. The certification shall be attached to and made a part of the application. The costs of any subsequent corrections necessary to achieve compliance with the requirements of Part 711 of this Title, when the prior work was not completed properly and was not accurately certified, shall not be considered allowable costs for reimbursement under Part 86 of this Title. This subparagraph does not waive any of the requirements of section 5-1.22 of this Title.

Clauses (f) and (l) of subparagraph (i) of paragraph (3) of subdivision (c) of Section 710.1 are amended to read as follows:

(3) Proposals eligible for administrative review.

* * *
(f) in addition, updating or modification of equipment utilized in the provision of a service listed in paragraph (2) of this subdivision, by a medical facility already approved to provide such service, except for the addition of equipment utilized in cardiac catheterization laboratory center services by a facility already approved to provide such service, which shall be subject to limited review pursuant to paragraph (7) of this subdivision;

* * *
(l) [reserved] the conversion of a Diagnostic Cardiac Catheterization Service as described in section 405.29(a)(4)(ii) of this Title into a PCI Capable Cardiac Catheterization Laboratory Center as described in section 405.29(a)(4)(i) of this Title; and the addition of Cardiac EP Laboratory Program services at a facility approved to provide Cardiac Catheterization Laboratory Center services that is not also approved to provide cardiac surgery services;

A new paragraph (7) of subdivision (c) of Section 710.1 is added, and existing paragraphs (7) and (8) are renumbered as (8) and (9), to read as follows:

(7) Cardiac Catheterization Proposals Requiring a Limited Review.

(i) The following proposals related to the expansion or modification of Cardiac Catheterization Laboratory Center services and equipment shall be subject to review pursuant to this paragraph, provided that they do not involve a total project cost in excess of the amount set forth in paragraph (5) of this subdivision or otherwise require a certificate of need under this Part:

(a) Any proposal to add or modify cardiac catheterization laboratories, facility areas or equipment to be utilized in the provision of approved Cardiac Catheterization Laboratory Center services by a facility already approved to provide PCI Capable Cardiac Catheterization Laboratory Center services;

(b) Any proposal to add or modify equipment in approved space by a facility already approved to provide Diagnostic Cardiac Catheterization Services; and

(c) Any proposal to add Cardiac EP Laboratory Program services at a facility that is already approved to provide cardiac surgery services.

(ii) (a) Reviews under this paragraph shall include, but not be limited to, the proposal's compliance with applicable statutes, codes and rules and regulations relating to the structural, architectural, engineering, environmental, safety and sanitary requirements of licensed medical facilities and with Part 405.29 of this Title.

(b) Requests for approval of proposals described in this subparagraph shall be made directly to the Director of the Division of Health Facility Planning. The applicant shall submit three (3) copies of such request, including information indicating the services to be provided, the facility areas to be utilized, and such other information as the Department may require. If construction is required, the request should include the cost of such construction and other information required by the Bureau of Architectural and Engineering Facility Planning under this Part. If the proposal involves the addition of Cardiac EP Laboratory Program Services, the applicant shall also submit a copy to the local health systems agency (HSA) having jurisdiction, if any. The HSA shall have 10 days to make a recommendation to the department.

(c) If the proposal is acceptable to the department, the applicant will be notified in writing and, if appropriate, an amended operating certificate will be issued. If the proposal is not acceptable, the applicant shall be notified in writing of such determination and the basis thereof. If the applicant has not submitted an acceptable proposal within 30 days of such determination, then the proposal shall be deemed an application subject to full or administrative review pursuant to section 2802 of the Public Health Law.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the proposed revision to Title 10 NYCRR Parts 710 is section 2803(2)(a) of the Public Health Law (PHL), which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the provisions and purposes of Article 28 of the PHL with respect to hospitals, including but not limited to, requirements for construction projects subject to Certificate of Need (CON) review.

Legislative Objectives:

Article 28 of the PHL authorizes Certificate of Need (CON) reviews to govern the construction of health care facilities and the addition of certain health care facility services and equipment. The mission of the CON process is to promote an accessible, high-quality, cost-effective health care delivery system. CON reviews of construction applications (including applications to add services or equipment) include consideration of public need, financial feasibility, current compliance of the operator, architecture and engineering standards and legal matters. The cost, impact, and complexity of the proposed project determine the level of review.

Current Requirements:

Recently, the Department proposed amendments to 10 NYCRR § 709.14, the need methodology for cardiac services and section 405.22, hospital minimum standards for cardiac services. The Department is seeking changes to those regulations to reflect the most recent advances in the provision of cardiac care. Proposed changes in Parts 405 and 709 include:

- Provisions requiring appropriate inter-hospital transfer protocols for acute myocardial infarction patients;
- New standards for health care facilities that have cardiac catheterization laboratories, but do not have cardiac surgery on site, that seek to perform Percutaneous Coronary Interventions (PCI);
- Prohibiting approval of new diagnostic-only cardiac catheterization laboratory centers;
- Establishing appropriate provider volumes associated with high quality care; avoiding unnecessary duplication of resources;
- Addressing geographic distribution of services.

Proposed amendments would also establish standards, and a formal CON review mechanism, for the provision of a new subspecialty in cardiac services, intra-cardiac electrophysiology (EP).

Proposed amendments to 710.1 are needed to conform to these changes and to ensure that CON levels of review for cardiac services are appropriate to promote access to high-quality cardiac services throughout the state. These proposed amendments would streamline the review process for CON applications to expand cardiac catheterization services, and/or to add EP services, at a previously approved cardiac catheterization site.

Need and Benefits:

The CON process is an effective health care planning tool that can help improve the distribution of health care resources, improve health care quality, and control health care spending. The proposed changes in CON regulations governing cardiac catheterization laboratory centers recognize the evolving nature of these services and the facilities that provide them. When regulations governing cardiac services were last updated, cardiac catheterization laboratories were primarily engaged in diagnostic procedures. Over the past decade, advances in cardiac services have greatly expanded the scope of cardiac catheterization services, and cardiac catheterization has become a widely-used intervention in treating coronary artery disease, as well as in the diagnosis of disease. PCI provides an alternative to more invasive cardiac interventions, and as a result, more PCIs are being performed each year, while cardiac surgeries are declining. Today, PCI is considered a life-saving intervention when performed in the early phases of a heart attack and can safely be performed in hospitals that do not offer cardiac surgery.

Further, as cardiac catheterization procedures have become increasingly interventional, the facility areas in which these procedures are performed have also evolved. Initially, cardiac catheterization procedures were largely performed in specialized procedure suites dedicated to catheterizations. Today, PCIs can be performed in the same cardiac lab visit as the angiogram, or diagnostic catheterization, or in operating rooms, as well as in "laboratories." In addition, hybrid procedures that combine catheterization and open surgery in operating rooms are growing. Accordingly, it no longer makes sense to closely scrutinize the number of "laboratories" operated by a hospital. Rather, CON regulations should focus on the need for additional centers and the ability of applicants to meet the requisite quality and volume standards.

Further, existing CON regulations do not address cardiac electrophysiology (EP) services. EP identifies and treats life threatening conditions in the electrical system of the heart. EP is a catheter-based procedure performed in a specially equipped cardiac laboratory. Regulations are needed to ensure that these services are delivered by qualified providers in approved settings and that the Department has the necessary information to monitor utilization and quality at these facilities.

Proposed changes to 710.1 will align levels of CON review with advances in the delivery of cardiac services and with other proposed regulations governing quality of care of, and public need for, cardiac services.

COSTS:

Costs to the Department of Health:

The proposed amendment would impose no new costs on the Department. The Department does not expect a significant change in the number of CON applications as a result of these amendments. Hospitals currently performing PCIs without cardiac surgery on-site will be allowed to continue doing so without a CON application. In addition, demand for cardiac surgery, and accordingly, for cardiac surgery CON approvals, has dropped in recent years. However, facilities engaged in cardiac catheterization procedures are increasingly seeking to add EP. These amendments will clarify the process for obtaining such approvals. They will also streamline the process for existing cardiac catheterization laboratory centers to secure approval to expand their capacity.

Costs to Other State Agencies:

There are no costs to other state agencies or offices of State government.

Costs to Local Government:

There are no costs to local government.

Costs to Private Regulated Parties:

Because the proposed amendment imposes no new burdensome requirements, duties or responsibilities on any entity subject to Article 28 of the PHL, there are no costs to private regulated parties.

Local Government Mandates:

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

Paperwork:

The proposed amendment imposes no new reporting requirements, forms or other paperwork. The amendment will actually reduce paperwork by requiring a less intensive review for certain projects.

Duplication:

There are no relevant State or Federal rules which duplicate, overlap or conflict with the proposed amendment.

Alternatives:

The Department discussed several options for the level of review that should be required for various cardiac catheterization services. The proposed regulations strike an appropriate balance between oversight of quality and safety and simplicity for regulated parties.

Federal Standards:

The proposed amendments do not exceed any minimum standards of the Federal government. There are no Federal rules currently addressing the CON process or state approval procedures for cardiac services.

Compliance Schedule:

The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register. It is anticipated that the proposed amendment will be announced within one month of the effective date through the posting of an announcement on the Department of Health's Internet site. There is no schedule of compliance for regulated parties, since the proposed amendment does not require providers to change their day-to-day practices, but rather affects their submission of CON applications and the processing of those applications by the Department.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendments does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201 a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

Office of Homeland Security

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Access by Data Subjects to Records Concerning the Data Subject and Maintained by the Office of Homeland Security

I.D. No. HLS-30-09-00005-P

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

Proposed Action: Addition of Part 10030 to Title 9 NYCRR.

Statutory authority: Public Officers Law, section 94(2); Executive Law, section 709(2)(n)

Subject: Access by data subjects to records concerning the data subject and maintained by the Office of Homeland Security.

Purpose: To provide procedures by which data subjects can seek to access their records maintained by the Office of Homeland Security.

Text of proposed rule: § 10030.1 Purpose and scope

(a) It is the responsibility and the intent of the Office of Homeland Security, hereinafter called the office, to comply with the provisions of article 6-A of the Public Officers Law, commonly known as the Personal Privacy Protection Law.

(b) The office shall maintain in its records only such personal informa-

tion that is relevant and necessary to accomplish a purpose of the office that is required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.

(c) Personal information subject to article 6-A of the Public Officers Law will be collected, whenever practicable, directly from the person (data subject) to whom the information pertains.

(d) The office seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely and complete.

(e) This Part provides information regarding the procedures by which members of the public may assert rights granted by the Personal Privacy Protection Law.

Section statutory authority: Public Officers Law, § 94(2)

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.2 Privacy compliance officer

(a) The privacy compliance officer shall be a counsel level position within the office.

(b) Communications shall be addressed to: Privacy Compliance Officer, NYS Office of Homeland Security, 1220 Washington Avenue, Building 7A, 7th Floor, Albany, NY 12226-2252.

(c) The privacy compliance officer is responsible for:

(1) assisting a natural person, hereinafter referred to as a data subject, in identifying and requesting personal information, if necessary;

(2) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;

(3) taking one of the following actions upon locating the record sought:

(i) make the record available to inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) permit the data subject to copy the record; or

(iii) deny access to the record in whole or in part and explain in writing the reasons therefor;

(4) making a copy available, upon request, upon payment of or offer to pay established fees, if any, or permitting the data subject to copy the records;

(5) certifying, upon request, that a copy of a record is a true copy; or

(6) certifying, upon request, that:

(i) the office does not have possession of the record sought;

(ii) the office cannot locate the record sought after having made a diligent search; or

(iii) the information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the office.

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.3 Proof of identity

(a) When records are made available in person following a request made by mail, the office may require appropriate identification, such as a driver's license, an identifier assigned to the data subject by the office, a photograph or similar information that confirms that the record sought pertains to the data subject.

(b) When a request is made by mail, the office may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

(c) Proof of identity shall not be required regarding a request for a record accessible to the public pursuant to article 6 of the Public Officers Law.

Section statutory authority: Public Officers Law, § 94(2)

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.4 Location

Records shall be made available at the location of the Office of Homeland Security which is closest to the requesting party, unless it is unreasonably impracticable to do so. In such case of impracticability, such records shall be made available at the Office of Homeland Security located at 1220 Washington Avenue, State Office Campus, Building 7A, 7th Floor, Albany, New York 12226.

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.5 Hours for public inspection

The office shall accept requests for records and produce records during the following hours: 10 a.m. to 4 p.m., except on Saturdays, Sundays and holidays.

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.6 Requests for records

(a) All requests shall be made in writing.

(b) A request shall reasonably describe the record sought. Whenever possible, the data subject should supply identifying information that assists the office in locating the record sought.

(c) Requests based upon categories of information described in a notice

of a system of records or a privacy impact statement shall be deemed to reasonably describe the record sought.

(d) Within five business days of the receipt of a request, the office shall provide access to the record, deny access in writing explaining the reasons therefor, or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 business days from the date of the acknowledgment.

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.7 Amendment of records

Within 30 business days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the office shall:

(a) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law; or

(b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

Section statutory authority: Public Officers Law, § 96

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.8 Denial of a request for a record

(a) Denial of a request for records or amendment or correction of a record or personal information:

(1) shall be in writing, explaining the reasons therefor; and

(2) identifying the person to whom an appeal may be directed.

(b) A failure to grant or deny access to records within five business days of the receipt of a request or within 30 business days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

(c) Any such denial may be appealed to: Chief Counsel, NYS Office of Homeland Security -- Administrative Appeal, 1220 Washington Avenue, Building 7A, 7th Floor, Albany, New York 12226.

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.9 Appeal

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to section 10030.8 of this Part may, within 30 days of such denial, appeal to the Chief Counsel, NYS Office of Homeland Security.

(b) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the date and location of a request for a record or amendment or correction of a record or personal information;

(2) the record that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 business days of an appeal concerning a denial of a request for correction or amendment, the person determining such appeals shall:

(1) provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law.

(e) The office shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant to this Part upon receipt, the determination thereof and, the reasons therefor at the time of such determination.

Section statutory authority: Civil Practice Law & Rules, § A78; Public Officers Law, § 96

Statutory authority: Executive Law, § 709(2)(n)

§ 10030.10 Statement of disagreement by data subject

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the office a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination; or

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law.

(b) Upon receipt of a statement of disagreement by a data subject, the office shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach the data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law, the office may also include a concise statement of its reasons for not making the requested amendment or correction.

Section statutory authority: Public Officers Law, § 96

Statutory authority: Executive Law, § 709 (2)(n)

§ 10030.11 Fees

(a) Unless otherwise prescribed by statute, there shall be no fee charged for:

(1) inspection of records;

(2) search for records; or

(3) any certification pursuant to this Part.

(b) Unless otherwise prescribed by statute, copies of records shall be provided:

(1) at a cost of 25 cents per individual photocopy page up to 9 x 14 inches; or

(2) upon payment of the actual cost of reproduction, if the record or personal information cannot be photocopied.

(c) The actual cost of reproduction shall be based upon the average unit of cost for copying a record, excluding fixed costs of the office, such as operator salaries and overhead.

Nothing contained in this section shall be construed as preventing the waiver of any fee in the discretion of the Privacy Compliance Officer.

Statutory authority: Executive Law, § 709 (2)(n)

§ 10030.12 Severability

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

Statutory authority: Executive Law, § 709 (2)(n).

Text of proposed rule and any required statements and analyses may be obtained from: James R. Clark, Assistant Counsel, NYS Office of Homeland Security, NYS Office of Homeland Security, Harriman State Office Camp, 1220 Washington Avenue, Bldg. 7A, 7th Fl., Albany, NY 12226, (518) 402-2227, email: jclark@security.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority:

The Office of Homeland Security has the authority under Executive Law, Article 26, section 709-2 (n) and Public Officers Law, Article 6-A, section 94(2) to promulgate rules relating to access by a natural person to personal information, if any, that may be maintained by the Office of Homeland Security.

Legislative Objectives:

The legislation authorizing the Office of Homeland Security to promulgate rules and regulations permits the Office to comply with the legal mandates of the laws of New York, including Article 6-A of the Public Officers Law, commonly known as the Personal Privacy Protection Law, which allows a natural person to access his or her personal information maintained by the agency. The Office of Homeland Security has sought to comply with both the mandates of the Legislature and the laws of New York by proposing procedural rules to allow a natural person to seek access to his or her personal information, if any, that may be maintained by the Office of Homeland Security.

Needs and Benefits:

Procedural rules are mandated by Article 6-A, section 94(2) of the Public Officers Law to be promulgated by agencies. Such rules will benefit the public by providing the necessary framework through which a natural person may seek to gain access to personal information, if any, maintained by the Office of Homeland Security.

Costs:

a) Costs to State Government: There are no additional costs to the State.
b) Costs to Local Government: There are no costs to local government.
c) Cost to Regulated Parties: Any costs are limited to parties seeking records, and fees for duplication of any records are set forth in accordance with Article 6-A of the Public Officers Law.

Local Government Mandates:

The proposed regulation does not impose a new program duty or responsibility upon any county, city, town, village, school district, fire district or special district.

Paperwork:

No new paperwork requirements are created by the proposed rule.

Duplication:

This regulation does not duplicate any existing local, state or federal regulation relating to the Office of Homeland Security.

Alternatives:

The Office considered the alternative of not promulgating this rule. However, that alternative was rejected because Article 6-A, section 94(2) of the Public Officers Law requires the promulgation of this rule.

Federal Standards:

No federal law or regulation is applicable.

Compliance Schedule:

This regulation will be effective upon publication of a notice of adoption in the State Register.

Access to Studies and Data Abstract:

No studies or separate data were utilized in the formation of the proposed public record access rules.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rule merely provides procedures whereby natural persons can seek access to personal information maintained by the Office of Homeland Security pursuant to the Public Officers Law.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This rule merely provides procedures whereby natural persons can seek access to personal information maintained by the Office of Homeland Security pursuant to the Public Officers Law.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This rule merely provides procedures whereby natural persons can seek access to personal information maintained by the Office of Homeland Security pursuant to the Public Officers Law.

Department of Labor

EMERGENCY RULE MAKING

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

I.D. No. LAB-30-09-00001-E

Filing No. 804

Filing Date: 2009-07-08

Effective Date: 2009-07-13

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 and general welfare.

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 operators examinations and hold administrative hearings.

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

Text of emergency rule: 12 NYCRR 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 - Crane Classifications. The Commissioner has the authority to issue certificates of competence for the following classes of cranes:

(1) Class A - Unrestricted - Conventional, cable, lattice boom, and friction are names that have been used in reference to this class. This class includes all cranes having a fixed lattice boom, with or without free fall capability; conventional tower cranes, derricks and all cranes with free fall capability. A certificate of competence for Class A allows the holder to operate any crane.

(2) Class B - Hydraulic - This class includes all hydraulic cranes which have a telescopic boom and swinging cab; there is no restriction on maximum manufacturer's rating. This class also includes small trailer or truck mounted self-erecting tower cranes, as well as boom trucks having a manufacturer's rated capacity of over 28 tons. A certificate of competence for Class B allows the holder to operate Class B, C and D cranes.

(3) Class C - Boom Truck - This includes cranes having telescopic booms which are generally truck mounted and up to 28 ton maximum manufacturers' rated capacity. A certificate of competence for Class C allows the holder to operate Class C and D cranes.

(4) Class D - Restricted Boom Truck - These cranes are also referred to as sign hangers, but their use not restricted to that industry. This class includes cranes having telescopic booms which are generally truck mounted and up to 3 ton maximum manufacturer's rated capacity, and up to 125 feet of boom. A certificate of competence for Class D allows the holder to operate Class D cranes only.

(5) Class E - Reserved

(6) Class F - Line Truck - These cranes are also referred to as digger derricks. These cranes have up to 15 ton maximum manufacturers' rated capacity, 65 foot maximum boom length, utilize a non-conductive tip with nylon rope, for use in electrical applications only. A certificate of competence for Class F allows the holder to operate Class F cranes only.

(d) 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] that class of 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 pursuant to this Part [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 shall designate one member of the examining board to conduct the practical examination for Class F line trucks. For all other practical examinations (for Classes A, B, C, D, and E), the commissioner shall designate a minimum of three members of the examining board to administer the practical examination, of which two members must be present at the practical examination and score the applicant and the other member(s) may review the video of the practical examination and score the applicant. When a 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 administered by three 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 three or more members that administered 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.

(1) 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]an administrative review of the reasons for the denial and a written response will be provided to such applicant but no hearing shall be required in connection with a denial of an application other than a renewal.

[(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.

Statutory authority: General Business Law Section 483

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 October 5, 2009.

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

Regulatory Impact Statement

1. Statutory Authority:

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 member of the Examining Board to conduct examinations for Class F Line Trucks and to designate three or more members of the Examining Board to administer all other classes (Class A, B, C, D and E) of examination, with two of the members present at the physical examination and the other members to review a video of the examination and score the examination. 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 regulation will facilitate the conduct of examinations by allowing the examinations to take place without a quorum of the board present at the exam. Additionally, the Department wants to make it easier to get administrative hearings scheduled regarding the revocation, suspension, and refusal to renew 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. The emergency regulation would also revise the procedures to be followed where an applicant fails the practical examination. Currently, the applicant is entitled to request a hearing regarding the failure of the practical examination. This is a rather unusual procedure to follow for failing a practical examination. Accordingly, the emergency regulation provides that an applicant who failed the practical examination and is denied a certificate of competence may ask for a review of the reasons for the denial and will receive a written response to that request.

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 relate to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, and refusal to renew 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. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation 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 regulations also have been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is rather an unusual process for someone failing a practical examination.

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, and refusal to renew 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. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation clarifies that the hearings may be conducted by a panel of two or more members of the Board. The regulation has been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is a rather unusual process for someone failing a practical exam. 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.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Appeals Process Pursuant to Chapter 508, Laws of 2008

I.D. No. MRD-28-09-00014-E

Filing No. 818

Filing Date: 2009-07-14

Effective Date: 2009-07-14

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

Action taken: Addition of Part 630 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 13.37

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

Specific reasons underlying the finding of necessity: The appeals process may allow for persons who were determined incorrectly not to need OMRDD services, to actually be determined to be eligible for services upon appeal. The person will then receive the necessary services.

Subject: Appeals process pursuant to Chapter 508, Laws of 2008.

Purpose: To establish an appeals process to use when a person is determined not to be in need of OMRDD adult services.

Text of emergency rule: Add a new Part 630 to 14 NYCRR as follows:

PART 630

ELIGIBILITY DETERMINATIONS FOR CHILDREN WHO ARE AGING OUT

Section 630.1 Applicability.

This Part applies to the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD) and its local administrative offices, the Developmental Disabilities Services Offices (DDSOs). It does not apply to voluntary agencies or private providers of services.

Section 630.2 Background.

(a) Subparagraph 4402(1)(b)(5) of the New York State Education Law and subdivision 398(13) of the New York State Social Services Law require that the committee on special education, multidisciplinary team or social services official send a report to OMRDD (if certain conditions are met) about a child who will be aging out and who may need adult services in the OMRDD system. A person ages out when he or she is no longer able to receive services in the educational system, foster care system or other system for children because of his or her age (usually related to the person attaining 21 years of age).

(b) Section 13.37 of the New York State Mental Hygiene Law sets forth the responsibilities of OMRDD related to the planning and referral process for children who are aging out.

(1) Once a report about the child has been received by OMRDD, OMRDD is charged with reviewing the report to determine whether the child will likely need adult services, including evaluating the child if necessary.

(2) If OMRDD determines that the child will not require adult services, OMRDD is required to notify the child's parent or guardian and referring entity. Chapter 508 of the Laws of 2008 amended Section 13.37 MHL to establish that if this determination is not acceptable to the child's parent or guardian, he or she may appeal the determination.

(c) Subdivisions 1.03(21) and (22) of the Mental Hygiene Law define "mental retardation" and "developmental disability."

Section 630.3. Determination of eligibility for services in the OMRDD system.

OMRDD shall determine whether individuals meet the criteria established in subdivision 1.03(22) of the Mental Hygiene Law and are therefore eligible to receive services in the OMRDD system. OMRDD determinations shall be in accordance with the eligibility determination process described in "Eligibility for OMRDD Services" which is inserted into this Part in section 630.5.

Section 630.4. Procedures for children aging out.

(a) For the purposes of meeting the requirements of Section 13.37 MHL, a child is determined to "likely need adult services" if the child is eligible for services in the OMRDD system.

(b) Upon receiving a report submitted pursuant to subparagraph 4402(1)(b)(5) of the Education Law or subdivision 398(13) of the Social Services Law, OMRDD shall determine whether the child is eligible for services utilizing the eligibility determination process described in "Eligibility for OMRDD Services."

(c) If OMRDD determines that the child is not eligible for services, it shall notify the child's parent or guardian and the committee on special education, multidisciplinary team or social services official which submitted the report.

(1) Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

(2) If the determination is not acceptable to the child's parent or guardian, he or she may appeal the determination in accordance with the eligibility determination process described in "Eligibility for OMRDD Services." The notice to the parent or guardian shall also describe the procedures for appealing the determination.

Section 630.5. "Eligibility for OMRDD Services."

The following policy of OMRDD entitled "Eligibility for OMRDD Services" is hereby inserted into this Part.

New York State Office of Mental Retardation and Developmental Disabilities

ELIGIBILITY FOR OMRDD SERVICES**Important Facts**

Revised December, 2008

OMRDD, through its local Developmental Disabilities Services Offices (DDSO), determines whether a person has a developmental disability and is eligible for OMRDD funded services. This fact sheet describes the Three-Step process used by OMRDD to make an eligibility determination of developmental disability.

NOTE: A determination of developmental disability does not mean the person is eligible for all OMRDD funded services. Some OMRDD funded services have additional eligibility criteria. For example, Intermediate Care Facilities, and Home and Community Based (HCBS) waiver programs include an additional level of care determination, and individuals are eligible for HCBS services only when they reside in appropriate living arrangements. These and other additional criteria for eligibility of specific OMRDD services are not reviewed through this process.

ELIGIBILITY DETERMINATION PROCESS**Eligibility Request**

An OMRDD Transmittal Form must accompany all requests submitted to the DDSO for eligibility determinations. The Transmittal Form includes the name of the person, the name of the person's representative, and relevant contact information. Documentation of the person's developmental disability must also be included as part of the eligibility request.

1st Step Review

DDSO staff review the eligibility request for completeness and share the information with other staff designated by the Director, as necessary. After this review, the DDSO notifies the person in writing that:

- (a) Eligibility or provisional eligibility has been determined; or
- (b) The request is incomplete and requires additional documentation; or
- (c) The request has been forwarded for a 2nd Step Review.

2nd Step Review

DDSO clinicians designated by the DDSO Director conduct a 2nd Step Review of the eligibility request forwarded by the 1st Step Review, along with any additional documentation provided by the person. If these clinicians require additional medical information, psychological test results, or historical documentation, the person is notified in writing of the type of information needed and the date by which it must be submitted to the DDSO.

Following the 2nd Step Review, the DDSO provides the person with written notification of its determination. If the person is found ineligible for OMRDD services because he or she does not have a developmental disability, the letter shall offer the person and his or her representative the opportunity to:

- (a) Meet with DDSO staff to discuss the determination and documentation reviewed; and
- (b) Request a 3rd Step Review; and
- (c) Request a Medicaid Fair Hearing in cases where Medicaid funded services are sought.

Note that a Notice of Decision informing the person of his or her right to request a Medicaid fair hearing is sent only when the Transmittal Form indicates that the person is interested in receiving Medicaid funded OMRDD services if determined eligible. If the person has not indicated Medicaid funded services, no fair hearing is offered and the decision of the DDSO is final.

The person may choose one, two or all three of the above options. If a fair hearing is requested, a 3rd Step Review will automatically be conducted.

3rd Step Review

3rd Step Eligibility Determination Committees established by OMRDD in NYC and Albany conduct the 3rd Step Reviews. Committee members include licensed practitioners who are not directly involved in the determinations made at the 1st and 2nd Step Reviews. The Committee reviews the submitted eligibility request and any ad-

ditional documentation provided by or on behalf of the person. The Committee forwards its recommendations to the DDSO Eligibility Coordinator. The DDSO Director or designated staff person considers the 3rd Step recommendations and informs the person of any change in the DDSO's determination. 3rd Step Reviews will be made prior to any fair hearing date.

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. MRD-28-09-00014-P, Issue of July 15, 2009. The emergency rule will expire September 11, 2009.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director of RAU, Office of Mental Retardation & Developmental Disabilities, 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 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 OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. Section 13.37 of the New York State Mental Hygiene Law establishes OMRDD's responsibilities in relation to the planning and referral of children with developmental disabilities for adult services. The statute requires OMRDD to determine whether a child referred to OMRDD through the planning and referral processes will likely need adult services.

2. Legislative Objectives: The amendments further the legislative objectives embodied in Mental Hygiene Law Section 13.37. Chapter 508 of the Laws of 2008 amended Section 13.37 to establish that if OMRDD determines that a child will not require adult services, and that if the determination is not acceptable to the child's parent or guardian, "may appeal the determination pursuant to regulations adopted by the commissioner."

3. Needs and Benefits: Section 13.37 of the Mental Hygiene Law (MHL) sets forth OMRDD's responsibility to review referrals from school and social services districts to determine whether a child aging out of those systems is likely to need adult services. These responsibilities date back to 1983 with several subsequent amendments including those added by Chapter 600, Laws of 1994.

Section 13.37 MHL requires that OMRDD provide written notification to the child's parents or guardian, and referring entity, of the reasons for its determination that the child does not need adult services in the OMRDD system. Chapter 508 of the Laws of 2008 adds a requirement to Section 13.37 MHL that the parent or guardian may appeal the determination if it is not acceptable to him or her pursuant to regulations adopted by OMRDD. The addition of new Part 630 of Title 14 NYCRR by this proposed regulation assists in the implementation of the new statutory requirement.

OMRDD has longstanding policy documents which establish a process for determining whether an individual has a developmental disability as defined by the Mental Hygiene Law and is therefore eligible for services in the OMRDD system. The pre-existing OMRDD process already includes procedures that can be utilized to appeal a determination that an individual does not have a developmental disability. A determination by OMRDD that a person does not have a developmental disability according to the legal definition is tantamount to a determination that the child does not require (or need) adult services, which is the standard established by Section 13.37 MHL.

In order to implement the new statute, OMRDD will continue to adhere to the procedures outlined in its longstanding policy documents regarding eligibility for services, which include appeals procedures. The new regulations therefore merely require adherence to these policies.

4. Costs:

- a. Costs to the Agency and the State and its local governments:

There will be no new costs to OMRDD or the State. OMRDD already has appeals processes pursuant to longstanding agency procedures regarding eligibility for services, which include appeals processes.

There will be no new costs to local governments as a result of the proposed amendments.

b. Costs to private regulated parties: There will be no new costs to private regulated parties.

5. Local Government Mandates: There are no new mandates on local governmental units or any other special districts.

6. Paperwork: There will be no new paperwork for private regulated parties or local government. There will be no new paperwork for OMRDD as it will merely continue to adhere to its longstanding procedures regarding eligibility for services.

7. Duplication: None.

8. Alternatives: OMRDD considered using general references in the regulations in lieu of including the actual text of its procedures for determining eligibility. However, OMRDD decided that it would be more valuable and clearer to regulated parties to include the existing eligibility determination process in the actual regulatory text.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the Federal government.

10. Compliance Schedule: OMRDD will continue to adhere to its longstanding policies regarding eligibility. Further, compliance was required by emergency regulations effective January 14, 2009 and April 15, 2009. No new compliance activities are necessary.

Regulatory Flexibility Analysis

1. Effect on small businesses: These amendments apply only to OMRDD and do not apply to small businesses that operate under the auspices of OMRDD.

The amendments result in no new costs for local government.

2. Compliance requirements: OMRDD will continue to adhere to its longstanding policies regarding eligibility, which include procedures to appeal a determination that a person is not eligible for services in the OMRDD system. The amendments contain no compliance requirements for small businesses or local governments.

3. Professional services: No additional professional services are required as a result of these amendments. The amendments will have no impact on the professional service needs of small businesses or local governments.

4. Compliance costs: There are no costs to local governments or to small businesses.

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

6. Minimizing adverse impact: These amendments impose no adverse economic impact on local governments or small businesses.

7. Small business and local government participation: Providers, individuals receiving services and family members were involved in the original development of OMRDD's longstanding policies and procedures regarding eligibility for services and have been familiar with the processes for years, including the appeals procedures. OMRDD also notified all providers about the promulgation of previous emergency regulations which contained the same provisions.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the proposed amendments has not been submitted. OMRDD has determined that the amendments will not impose any adverse impact, reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The amendments concern procedures for appealing a determination that a person aging out does not need services in the OMRDD system. No compliance activities are imposed on providers.

Job Impact Statement

A Job Impact Statement is not submitted because the amendment will not present an adverse impact on existing jobs or employment opportunities. The amendments concern procedures for appealing a determination that a person aging out does not need services in the OMRDD system. No compliance activities are imposed on providers and no new procedures will be utilized by OMRDD. OMRDD will continue to adhere to its longstanding policies and procedures related to determining eligibility for services in the OMRDD system.

Public Service Commission

EMERGENCY RULE MAKING

The Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0838 Issued November 21, 2008

I.D. No. PSC-09-09-00008-E

Filing Date: 2009-07-10

Effective Date: 2009-07-10

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

Action taken: On July 10, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at Eastwood Apartments, 510-580 Main Street, Roosevelt Island, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for rehearing states that Eastwood Apartments contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of Eastwood Apartments are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as North Town Roosevelt, LLC apparently intends to implement, may jeopardize the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of Eastwood Apartments and the potential violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0838 issued November 21, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0838 issued November 21, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at Eastwood Apartments, 510-580 Main Street, Roosevelt Island, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On July 10, 2009 the Commission readopted for the second time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00008-EP, Issue of March 4, 2009. The emergency rule will expire September 7, 2009

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

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-0838SA4)

**EMERGENCY
RULE MAKING**

Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0836 Issued November 24, 2008

I.D. No. PSC-09-09-00009-E

Filing Date: 2009-07-10

Effective Date: 2009-07-10

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

Action taken: On July 10, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at Schomburg Plaza, 1295 Fifth Avenue, 1309 Fifth Ave. and 1660 Madison Ave., New York, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for rehearing states that Schomburg Plaza contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of Schomburg Plaza are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as Frawley Plaza, LLC apparently intends to implement, may jeopardize the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of Schomburg Plaza and the potential violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0836 issued November 24, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0836 issued November 24, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at Schomburg Plaza, 1295 Fifth Avenue, 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On July 10, 2009, the Commission readopted for the second time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00009-EP, Issue of March 4, 2009. The emergency rule will expire September 7, 2009.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

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-0836SA4)

**EMERGENCY
RULE MAKING**

Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0837 Issued November 21, 2008

I.D. No. PSC-09-09-00010-E

Filing Date: 2009-07-10

Effective Date: 2009-07-10

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

Action taken: On July 10, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at Metro North Apartments, 1940-1966 First Avenue and 420 East 102nd Street, New York, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for rehearing states that Metro North Apartments contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of Metro North Apartments are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as Metro North Owners, LLC apparently intends to implement, may jeopardize the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of Metro North Apartments and the potential violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0837 issued November 21, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0837 issued November 21, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at Metro North Apartments, 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On July 10, 2009, the Commission readopted for the second time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00010-EP, Issue of March 4, 2009. The emergency rule will expire September 7, 2009.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

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-0837SA4)

**EMERGENCY
RULE MAKING**

The Readoption of the Emergency Rule Staying the Commission Order in Case 08-E-0839 Issued November 21, 2008

I.D. No. PSC-09-09-00011-E

Filing Date: 2009-07-10

Effective Date: 2009-07-10

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

Action taken: On July 10, 2009, the Public Service Commission readopted the emergency rule staying its Order approving the submetering of electricity at KNW Apartments, 1890 Lexington Avenue and 1900 Lexington Avenue, New York, New York.

Statutory authority: Public Service Law, sections 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

Specific reasons underlying the finding of necessity: Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of tenants who are low income are elderly and/or are disabled. The petition for rehearing states that KNW Apartments contains a large number of low-income Section 8 tenants, individuals with disabilities and the elderly. It asserts that tenants of KNW Apartments are at serious risk for imminent harm. These allegations suggest that the Submetering Plan, as KNW Apartments, LLC apparently intends to implement, may jeopardize the tenants' health and safety where unpaid electric charges could be used to allege the non-payment of rent, and, as a result threaten the tenant with eviction. In light of the allegations, there is concern regarding the potential for imminent harm to the tenants of KNW Apartments and the potential violation(s) of Home Energy Fair Practices Act if action is not taken on an emergency basis pursuant to the State Administrative Procedure Act.

Subject: The readoption of the emergency rule staying the Commission Order in Case 08-E-0839 issued November 21, 2008.

Purpose: The readoption of the emergency rule staying the Commission Order in Case 08-E-0839 issued November 21, 2008.

Substance of emergency rule: On February 12, 2009, the Public Service Commission (Commission) adopted an emergency rule staying its Order approving the submetering of electricity at KNW Apartments, LLC, 1890 Lexington Avenue and 1900 Lexington Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. On July 10, 2009, the Commission readopted for the second time the emergency rule staying its Order approving the submetering of electricity for an additional 60 days to allow Department of Public Service staff time to continue its investigation.

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. PSC-09-09-00011-EP, Issue of March 4, 2009. The emergency rule will expire September 7, 2009

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

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-0839SA4)

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

Additional Funding for Interim Gas Energy Efficiency Programs Currently Being Implemented by Niagara Mohawk

I.D. No. PSC-30-09-00010-P

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

Proposed Action: The Commission is considering a petition by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) for additional funding for the company's interim gas energy efficiency programs currently being implemented under Case 08-G-0609.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Additional funding for interim gas energy efficiency programs currently being implemented by Niagara Mohawk.

Purpose: To fund the continued operation of Niagara Mohawk's interim gas energy efficiency programs through October 31, 2009.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposal set forth by Niagara Mohawk Power Corporation d/b/a National Grid in a petition dated June 9, 2009, seeking additional funding for interim gas energy efficiency programs. The programs are currently being administered pursuant to an order in Case 08-G-0609 entitled "Order Adopting an Interim Energy Efficiency Program and Modifying the Joint Proposal Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Commission on September 18, 2008.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0609SP3)

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

Abandonment of the Shelter Valley Water Works by Its Operator, Ernest Bury

I.D. No. PSC-30-09-00011-P

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

Proposed Action: The Commission is considering whether to approve, reject or modify a petition of Ernest Bury to abandon operation of the Shelter Valley Water Works.

Statutory authority: Public Service Law, section 89-c(1)

Subject: Abandonment of the Shelter Valley Water Works by its operator, Ernest Bury.

Purpose: To abandon operation of the Shelter Valley Water Works system.

Substance of proposed rule: Shelter Valley Water Works (SVWW) is a water system in the Town of Newfield, Tompkins County which formerly provided water service to approximately 22 customers. The operation of the system was abandoned approximately two years ago by its operator and proprietor, Mr. Ernest Bury. This action was not approved by the Commission. According to the Tompkins County Health Department the former customers of the SVWW now receive water service from a municipal system in the area. The Commission is considering whether it is in the public interest to approve the abandonment of the SVWW.

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.

(03-W-0754SP2)

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

Petition for Rehearing by Consolidated Edison Company of New York, Inc

I.D. No. PSC-30-09-00012-P

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

Proposed Action: The PSC is considering a petition for rehearing filed by Consolidated Edison Company of New York, Inc. of its June 3, 2009 Order Concerning ESCO Referral Programs.

Statutory authority: Public Service Law, sections 5(1)(b), 22 and 66(1)

Subject: Petition for rehearing by Consolidated Edison Company of New York, Inc.

Purpose: To consider a petition for rehearing filed by Consolidated Edison Company of the Commission's June 3, 2009 Order.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to approve, deny, or modify, in whole or in part, Consolidated Edison Company of New York, Inc.'s (Con Edison) petition for rehearing of the Commission's June 3, 2009 Order on ESCO Referral Program. Among the issues the Commission may consider are the "warm transfer" of customer calls from the utility to energy services companies (ESCOs) and additional utility staffing requirements, as well as other related matters.

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.

(07-E-0523SP7)

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

Fixed Price Option (FPO)

I.D. No. PSC-30-09-00013-P

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

Proposed Action: The Commission is considering a proposed filing by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, P.S.C. Nos. 120 and 121 — Electricity.

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

Subject: Fixed Price Option (FPO).

Purpose: To revise the calculation of the commodity charge upon elimination of the FPO.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by New York State Electric & Gas Corporation (NYSEG) to revise the calculation of the commodity charge for the NYSEG Supply Service and the transition charge, which is applicable to customers whether they choose the NYSEG Supply Service or ESCO Supply Service. Under the proposed filing, the Fixed Price Option and the ESCO Option with Supply Adjustment would expire at the time the revised commodity charge calculations take effect. The proposed filing has an effective date of January 1, 2010.

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

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

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

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

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

(09-E-0227SP2)

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

Fixed Price Option (FPO)

I.D. No. PSC-30-09-00014-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 a proposed filing by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, P.S.C. Nos. 18 and 19 — Electricity.

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

Subject: Fixed Price Option (FPO).

Purpose: To revise the calculation of the commodity charge upon elimination of the FPO.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Rochester Gas and Electric Corporation (RG&E) to revise the calculation of the commodity charge for the RG&E Supply Service and the transition charge, which is applicable to customers whether they choose the RG&E Supply Service or ESCO Supply Service. Under the proposed filing, the Fixed Price Option (FPO) and the ESCO Option with Supply Adjustment (EOSP) would expire at the time the revised commodity charge calculations take effect. The proposed filing has an effective date of January 1, 2010.

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

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

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

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

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

(09-E-0228SP2)

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

Pipeline Transfer and Lightened and Incidental Regulation

I.D. No. PSC-30-09-00015-P

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

Proposed Action: The Public Service Commission is considering whether to approve, reject or to modify requests of Seneca Power Partners, L.P. (SPP) to transfer a pipeline to Alliance Energy Transmissions, LLC (AET) and of AET for lightened and incidental regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1) and (13)

Subject: Pipeline transfer and lightened and incidental regulation.

Purpose: To consider the requests of SPP and AET.

Substance of proposed rule: In a Joint Petition filed June 11, 2009, Seneca Power Partners, L.P. (SPP) and Alliance Energy Transmissions, LLC (AET) sought a declaratory ruling that the transfer of a gas transmission pipeline from SPP to AET is not subject to the Commission's jurisdiction. In the alternative, SPP and AET sought approval of the transfer pursuant to § 70 of the Public Service Law. AET also sought lightened and incidental regulation.

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

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

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

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

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

(09-G-0490SP1)

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

Water Rates and Charges

I.D. No. PSC-30-09-00016-P

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

Proposed Action: On July 10, 2009, National Aqueous Corporation (National Aqueous) filed a petition requesting authority to surcharge each of its customers a one-time surcharge of \$588.81 to become effective October 1, 2009, to make water system improvements.

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

Subject: Water rates and charges.

Purpose: For approval to surcharge National Aqueous customers a one-time surcharge of \$588.81 per customer.

Substance of proposed rule: On July 10, 2009, National Aqueous Corporation (National Aqueous or the company) filed a petition requesting authority to surcharge each of its customers a one-time surcharge of \$588.81 to cover the cost of installing a new permanent disinfection system as required by the New York State Department of Health (NYS-DOH) and to become effective October 1, 2009. The company estimates the cost to construct a new fiberglass structure and other associated costs to install the disinfection system to be approximately \$37,095. National Aqueous provides unmetered water service to 63 residential customers in the Melody Lakes Estates Development located in the Town of Thompson, Sullivan County. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(09-W-0543SP1)

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

The Companies Propose to Establish an Alternative Surcharge Mechanism and Timeframe to Collect the TSA

I.D. No. PSC-30-09-00017-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 whether to approve, modify or deny a petition of the National Grid Companies for an alternative surcharge mechanism to collect the Temporary State Energy and Utility Conservation Assessment (TSA).

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

Subject: The companies propose to establish an alternative surcharge mechanism and timeframe to collect the TSA.

Purpose: To establish an alternative surcharge mechanism.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposal set forth by Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid LI, and Niagara Mohawk Power Corporation d/b/a National Grid Upstate (together the Companies) in a petition dated July 1, 2009 seeking to establish an alternative surcharge mechanism to collect the Temporary State Energy and Utility Conservation Assessment. The issues under consideration include deviating from the June to July cycle for collecting revenues set forth in the Commission's June 19, 2009 Order Implementing Temporary State Assessment, fully collecting the surcharge for the 2009-2010 by March 31, 2010 and any other related issues.

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

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

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

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

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

(09-M-0311SP2)

Office of Real Property Services

NOTICE OF ADOPTION

Agricultural Assessment Program Definitions

I.D. No. RPS-37-08-00002-A

Filing No. 806

Filing Date: 2009-07-09

Effective Date: 2009-07-29

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

Action taken: Amendment of section 194.1 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 202(1)(l); and Agriculture and Markets Law, section 307

Subject: Agricultural Assessment Program definitions.

Purpose: To conform the definitions set forth in section 194.1 with the Agriculture and Markets Law.

Text or summary was published in the September 10, 2008 issue of the Register, I.D. No. RPS-37-08-00002-P.

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

Revised rule making(s) were previously published in the State Register on March 18, 2009.

Text of rule and any required statements and analyses may be obtained from: Robert J. Mark, Esq., Office of Real Property Services, 16 Sheridan Avenue, Albany, NY 12210-2714, (518) 474-8821, email: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of State

EMERGENCY RULE MAKING

Administration and Enforcement of the Uniform Code by the Department of State

I.D. No. DOS-30-09-00004-E

Filing No. 805

Filing Date: 2009-07-08

Effective Date: 2009-07-08

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

Action taken: Renumbering of section 1202.7 to section 1202.12; repeal of sections 1202.1-1202.6; and addition of new sections 1202.1-1202.11 to Title 19 NYCRR.

Statutory authority: Executive Law, section 381(1), (2)

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

Specific reasons underlying the finding of necessity: Part 1202 of Title 19 NYCRR ("Part 1202") establishes the procedures applicable in circumstance in which the Department of State ("DOS") must administer and enforce the Uniform Fire Prevention and Building Code (the "Uniform Code"). For many years prior to 2009, DOS administered and enforced the Uniform Code only with respect to buildings and structures in the custody of 15 counties (the "opted-out counties"). On January 1, 2009, DOS became responsible for administering and enforcing the Uniform Code with respect to all buildings and structures, public and private, in a town located in one of the opted-out counties. However, DOS's code enforcement program (Part 1202) does not now include all of the features which must be included in a code enforcement program adopted by a local government that administers and enforces the Uniform Code (those

features being described in 19 NYCRR Part 1203). This rule will amend Part 1202 to make the features of DOS's code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of Part 1203. Adopting this rule on an emergency basis is required to preserve public safety and the general welfare by ensuring that administration and enforcement of the Uniform Code by DOS in the town mentioned above will be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1).

Subject: Administration and enforcement of the Uniform Code by the Department of State.

Purpose: To ensure that administration and enforcement of the Uniform Code will be conducted in a manner that satisfies the minimum standards promulgated by the Secretary of State.

Substance of emergency rule: Subdivision 1 of Executive Law section 381 authorizes the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the State Uniform Fire Prevention and Building Code (the Uniform Code). Subdivision 2 of Executive Law section 381 provides that in the event that a local government elects not to administer and enforce the Uniform Code within such local government, and the county in which such local government is located elects not to administer and enforce the Uniform Code in such county, the Secretary of State shall administer and enforce the Uniform Code in the place and stead of such local government. Part 1202 of Title 19 NYCRR establishes the procedures applicable in circumstance in which the Secretary of State must administer and enforce the Uniform Code. This rule amends Part 1202.

This rule renumbers current Section 1202.7 (Fees) of Title 19 NYCRR as section 1202.12.

This rule repeals current Sections 1202.1 to 1202.6 of Title 19 NYCRR and adds new Sections 1202.1 to 1202.11.

New Section 1202.1 specifies the purpose of Part 1202 and defines certain terms used in Part 1202.

New Section 1202.2 provides that building permits and demolition permits are required for any work which must comply with the Uniform Code or Energy Code. Section 1202.2 also specifies certain exceptions, where a permit is not required; specifies requirements applicable to permit applications; specifies requirements applicable when a permit applicant is not the owner of the subject property; specifies requirements applicable to the construction documents that must be submitted with a permit application; specifies requirements applicable to the issuance and display of permits; specifies when permits may be suspended or revoked; and specifies the duration of permits and the procedures applicable to renewal of permits.

New Section 1202.3 provides that construction inspections will be performed at appropriate stages during the performance of work for which a building permit has been issued. Section 1202.2 also includes provisions relating to scheduling inspections, and includes provisions relating to the results of the inspections.

New Section 1202.4 provides that a certificate of occupancy or certificate of completion must be obtained upon completion of any work for which a permit has been issued. Section 1202.4 also prohibits the use or occupancy of buildings or structures without an appropriate certificate of occupancy or certificate of completion; prohibits any change in the nature of the occupancy of an existing building or structure, or any portion thereof, unless a certificate of occupancy authorizing the change has been issued; includes provisions relating to temporary certificates of occupancy; includes provisions relating to the issuance of certificates and the suspension or revocation of certificates.

New Section 1202.5 provides for periodic inspections of buildings for compliance with applicable fire safety and property maintenance provisions of the Uniform Code. In general, buildings which contain an area of public assembly, buildings under the jurisdiction of a college, and dormitories shall be subject to inspection at least once every twelve (12) months; normally unoccupied buildings shall be subject to inspection at least once every sixty (60) months; and all other buildings shall be subject to inspection at least once every thirty-six (36) months. However, Section 1202.5 provides that in most cases, regular, periodic inspections of agricultural buildings used directly and solely for agricultural purposes, one-family dwellings, two-family dwellings, townhouses, or occupied dwelling units in multiple dwellings shall not be required. Section 1202.5 also includes provisions relating to inspections that are in addition to the regular, periodic inspections previously described.

New Section 1202.6 includes provisions relating to operating permits. Section 1202.6 prohibits certain activities and certain uses of buildings without an appropriate operating permit. Section 1202.6 also includes provisions relating to applications for operating permits; tests that may be required prior to the issuance of an operating permit; inspections to be

performed prior to the issuance of an operating permit; the duration of an operating permit; keeping operating permits at the subject premises and making operation permits available for inspection; posting operation permits in a conspicuous place at the subject premises; and revocation or suspension of operating permits.

New Section 1202.7 includes provisions relating to violations and remedies. Section 1202.7 authorizes the Department of State and its employees and agents to issue stop work orders, not to be occupied orders, compliance orders, notices of violation, and appearance tickets, and includes provisions relating to the content, service, and effect of stop work orders, not to be occupied orders and compliance orders. Section 1202.7 also includes provisions relating to applications by the Department of State for injunctive relief. The remedies and penalties specified in section 1202.7 are not exclusive, and shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in any other applicable law.

New Section 1202.8 includes provisions relating the review and investigation of complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, or Part 1202.

New Section 1202.9 provides that the chief of any fire department providing fire fighting services for any building subject to this Part shall promptly notify the Department of any fire or explosion in any building subject to this Part involving any structural damage, fuel burning appliance, chimney or gas vent.

New Section 1202.10 includes provisions relating to unsafe building and structures.

New Section 1202.11 includes provisions relating to performance of reviews of permit applications by third party reviewers, and performance of construction inspections, periodic inspections and operating permit inspections by third party inspectors. Such reviews would be performed at the cost and expense of the owner or occupant or proposed owner or occupant of the subject premises by a competent reviewer or inspector acceptable to the Department of State.

Former section 1202.7 of Title 19 NYCRR, renumbered as section 1202.12 by this rule, is amended by this rule. In general, existing fees are not changed, although some provisions relating to existing fees are clarified. Section 1202.12 also adds provisions relating to reduced fees payable to the Department of State when a third party reviewer, a third party inspector, or both a third party reviewer and a third party inspector are used. Section 1202.12 also establishes fees for items for which no fee was previously established, such as fees for operating permits.

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 October 5, 2009.

Text of rule and any required statements and analyses may be obtained from: Steven Rocklin, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Steven.Rocklin@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Subdivision 1 of Executive Law section 381 authorizes the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the State Uniform Fire Prevention and Building Code (the Uniform Code).

Subdivision 2 of Executive Law section 381 provides that in the event that a local government elects not to administer and enforce the Uniform Code within such local government, and the county in which such local government is located elects not to administer and enforce the Uniform Code in such county, the Secretary of State shall administer and enforce the Uniform Code in the place and stead of such local government.

Part 1202 of Title 19 NYCRR establishes the procedures applicable in circumstance in which the Secretary of State must administer and enforce the Uniform Code. This rule amends Part 1202.

2. LEGISLATIVE OBJECTIVES.

This rule will further the legislative objective of ensuring that administration and enforcement of the Uniform Code be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1).

Part 1203 of Title 19 NYCRR was promulgated pursuant to Executive Law section 381(1). Part 1203 establishes the minimum standards for administration and enforcement of the Uniform Code by local governments.

Part 1203 was amended in 2005, with an effective date of January 1, 2007. At the time of the amendment of Part 1203, the Department of State (DOS) was not responsible for administration and enforcement of the Uniform Code in any local government. However, one local government has recently enacted a local law providing that it (the local government)

will not enforce the Uniform Code within such local government on or after January 1, 2009. This particular local government is located in a county that has also elected not to enforce the Uniform Code. As a result, DOS will become responsible for administration and enforcement of the Uniform Code within that local government, starting on January 1, 2009.

Part 1202 of Title 19 NYCRR establishes the procedures applicable in circumstances in which DOS must administer and enforce the Uniform Code. As of January 1, 2009, Part 1202 will be, in effect, the code enforcement program in the local government mentioned above. Thereafter, Part 1202 will become the code enforcement program in any other local government in which DOS may become responsible for enforcing the code. This rule will amend Part 1202 to make the features of DOS's code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of Part 1203.

3. NEEDS AND BENEFITS.

The purpose of this rule is to cause the features included in DOS's program for enforcing the Uniform Code (Part 1202) to be substantially similar to the features which are required (under Part 1203) to be included in a code enforcement program adopted by any local government that enforces the Uniform Code. This is necessary because certain features (e.g., operating permit requirements) now required by Part 1203 are not now included in Part 1202. The benefits to be derived from this rule include insuring that enforcement of the Uniform Code by DOS in those local governments where DOS has that responsibility complies with the minimum standards set forth in the current version of Part 1203.

4. COSTS.

Costs to Regulated Parties.

Regulated parties that build, alter, or demolish buildings or structures located in a local government in which DOS enforces the Uniform Code will be required to obtain building permits, demolition permits, and certificates of occupancy or completion. The initial costs of obtaining a building or demolition permit will include the costs of obtaining the construction documents and other documents needed to include in or with the application for the required permits, and the fees payable to obtain such permits.

The cost of the required construction documents (plans, specifications and drawings) will depend on the nature and scope of the project. DOS estimates that the cost of construction documents for a typical 1,500 square foot one-family dwelling will be approximately \$10,000 to \$18,000 (\$7.00 to \$12.00 per square foot). The cost of construction documents for commercial buildings will vary significantly, depending upon the use, size and complexity of the building. However, the requirement that construction documents be provided as part of a permit application is not a new requirement added by this rule. Part 1202 currently requires the submission of "three sets of plans and specifications for the proposed work." This rule would amend this requirement by providing that only two sets of construction documents need be submitted; this may reduce the cost of applying for a building or demolition permit in certain cases.

The fees to be paid to DOS for building permits or demolition permits are set forth in the current version of Part 1202, and will be set forth in section 1202.12 of the new version of Part 1202 to be added by this rule. This rule does not change those fees. Typical fees are as follows: \$200 for a building permit for a 1,500 square foot one-family dwelling; \$300 for a building permit for a 2,500 square foot one-family dwelling; \$200 per 1,000 square feet for a building permit for a multiple dwelling or other general construction; and \$50 for a demolition permit. This rule continues provisions which are found in the current version of Part 1202 and which allow DOS to require the use of a third-party inspector to perform required inspections. This rule also adds provisions which allow DOS to require the use of a third-party reviewer to review permit applications. Permit applicants will be required to pay the fees and expenses charged by any third-party inspector or third-party reviewer; however, in either such case, the fee payable to DOS for the permit will be reduced.

The fee for renewing a building permit or demolition permit will be one-half of the original permit fee.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to obtain an operating permit. The initial costs of obtaining an operating permit will include a permit fee of \$100.00 per building affected by the permit, plus an inspection fee of \$100.00 per building affected by the permit. DOS may require that a third-party inspector perform the required inspection; in such a case, the applicant will be required to pay the fees and expenses charged by the third-party inspector, but will not be required to pay the \$100 per building inspection fee that would otherwise be payable to DOS. The applicant will also be required to pay for any tests or reports that DOS may determine to

be necessary to verify that the proposed activity or use complies with the applicable provisions of the Uniform Code.

The fee for renewing an operating permit will be one-half of the initial fee, and will be payable annually in the case of an operating permit issued for an area of public assembly and once every three years in any other case.

Costs to the Department of State, the State, and Local Governments.

DOS will be required to provide the staff necessary to administer and enforce the Uniform Code in the local government(s) where the Department has that responsibility, and DOS will be required to develop permit application forms, permit forms, and other aspects of programs for enforcing the Uniform Code in such local government(s). However, these obligations are imposed upon the Department by statute, as a consequence of local governments and counties opting out of their code enforcement responsibilities, and not by reason of this rule or implementation of this rule. Further, it is anticipated that these costs will be offset, in part, by the fees to be charged.

The State of New York will be required to pay the costs incurred by DOS in providing code enforcement services in the affected local governments and in developing and implementing the code enforcement programs. However, these obligations arise by operation of the statute, as a consequence of local governments and counties opting out of their code enforcement responsibilities, and not by reason of this rule or implementation of this rule.

There will be no cost to local governments for the implementation of this rule, except as follows: DOS currently enforces the Uniform Code with respect to buildings and structures controlled by counties that have elected not to enforce the Uniform Code (the "opted-out counties"). Enforcement of the code against those buildings and structures is performed under the current version of Part 1202. This rule will amend Part 1202 by, inter alia, adding provisions requiring the issuance of operating permits in certain cases and adding provisions permitting DOS to require the use of third-party reviewers to review permit applications. Opted-out counties will incur the cost of applying for, obtaining, and maintaining any required operating permits. Further, if DOS requires the use of a third-party reviewer to review any building permit, demolition permit or operating permit application filed by an opted-out county, such county will be required to pay the fees and expenses charged by such third-party reviewer; however, in a case where a third-party reviewer is used, the permit fee that would otherwise be paid to DOS will be reduced.

5. PAPERWORK.

This rule will not impose any new reporting requirements.

This rule will require regulated parties to file permit application forms and to obtain permits. However, regulated parties (other than opted-out counties) should now be subject to similar requirements under code enforcement programs that local governments are required to adopt under Part 1203. Further, except for the new provisions relating to operating permits to be added to Part 1202 by this rule, opted-out counties are now subject to similar paperwork requirements under the current version of Part 1202.

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: Opted-out counties, which are not subject to operating permit requirements under the current version of Part 1202, will be subject to the operating permit requirements to be added to Part 1202 by this rule.

7. DUPLICATION.

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

8. ALTERNATIVES.

The alternative of making no change to Part 1202 was considered. However, it was determined that the existing provisions of Part 1202 do not include certain features (e.g., operating permit requirements) which are required by Part 1203 to be included in code enforcement programs adopted by local governments that enforce the Uniform Code, and it was determined that the differences between the features included in Part 1202 and the features required by Part 1203 should be minimized before the Department assumes responsibility for enforcing the code in a local government. 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.

It is anticipated that regulated persons will be able to achieve compliance with this rule immediately.

Regulatory Flexibility Analysis

1. SMALL BUSINESSES AND LOCAL GOVERNMENTS TO WHICH THIS RULE WILL APPLY.

This rule amends 19 NYCRR Part 1202 ("Part 1202"), which sets forth the procedures applicable in circumstances in which the Department of

State ("DOS") must administer and enforce the Uniform Fire Prevention and Building Code ("Uniform Code"). Currently, DOS administers and enforces the Uniform Code with respect to buildings and structures in the custody of the following fifteen counties (the "opted-out counties"): Allegany County, Cattaraugus County, Chautauga County, Clinton County, Essex County, Greene County, Hamilton County, Herkimer County, Madison County, Oneida County, Oswego County, Saratoga County, Schoharie County, St. Lawrence County, and Wayne County. Effective January 1, 2009, DOS will also be responsible for administering and enforcing the Uniform Code with respect to all buildings and structures, public and private, in the Town of Conewango in Cattaraugus County.

This rule will apply to (1) the opted-out counties, (2) the Town of Conewango, and (3) all individuals and businesses (including all small businesses) in the Town of Conewango. This rule will also apply to any county that elects to opt out in the future, and to all individuals and businesses (including all small businesses) in any city, town or village in which DOS becomes responsible for administering and enforcing the Uniform Code in the future.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule will require regulated parties to file permit application forms and to obtain permits. However, regulated parties (other than opted-out counties) should now be subject to similar requirements under code enforcement programs that local governments are required to adopt under 19 NYCRR Part 1203. Further, except for the new provisions relating to operating permits to be added to Part 1202 by this rule, opted-out counties are now subject to similar paperwork requirements under the current version of Part 1202.

3. PROFESSIONAL SERVICES.

Regulated parties will be required to provide construction documents (plans, drawings and specifications) when they apply for a building or demolition permit. In most cases, construction documents must be stamped and signed by a registered architect or professional engineer. However, the requirement that permit applicants submit construction documents is not a new requirement added by this rule; it is a requirement which is established by statute (Executive Law section 7303(1)), which is reflected in the current version of Part 1202, and which should be reflected in code enforcement programs enacted by local governments that enforce the Uniform Code.

4. COMPLIANCE COSTS.

An opted-out county that builds, alters, or demolishes a building or structure will be required to obtain a building permit, demolition permit, or certificate of occupancy or completion. Regulated parties that build, alter, or demolish buildings or structures located in a local government in which DOS enforces the Uniform Code will be required to obtain building permits, demolition permits, and certificates of occupancy or completion. The initial costs of obtaining a building or demolition permit will include the costs of obtaining the construction documents and other documents needed to include in or with the application for the required permits, and the fees payable to obtain such permits.

The cost of the required construction documents (plans, specifications and drawings) will depend on the nature and scope of the project. DOS estimates that the cost of construction documents for a typical 1,500 square foot one-family dwelling will be approximately \$10,000 to \$18,000 (\$7.00 to \$12.00 per square foot). The cost of construction documents for commercial buildings will vary significantly, depending upon the use, size and complexity of the building. However, the requirement that construction documents be provided as part of a permit application is not a new requirement added by this rule. Part 1202 currently requires the submission of "three sets of plans and specifications for the proposed work." This rule would amend this requirement by providing that only two sets of construction documents need be submitted; this may reduce the cost of applying for a building or demolition permit in certain cases.

The fees to be paid to DOS for building permits or demolition permits are set forth in the current version of Part 1202, and will be set forth in section 1202.12 of the new version of Part 1202 to be added by this rule. This rule does not change those fees. Typical fees are as follows: \$200 for a building permit for a 1,500 square foot one-family dwelling; \$300 for a building permit for a 2,500 square foot one-family dwelling; \$200 per 1,000 square feet for a building permit for a multiple dwelling or other general construction; and \$50 for a demolition permit. This rule continues provisions which are found in the current version of Part 1202 and which allow DOS to require the use of a third-party inspector to perform required inspections. This rule also adds provisions which allow DOS to require the use of a third-party reviewer to review permit applications. Permit applicants will be required to pay the fees and expenses charged by any third-party inspector or third-party reviewer; however, in either such case, the fee payable to DOS for the permit will be reduced.

The fee for renewing a building permit or demolition permit will be one-half of the original permit fee.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly areas with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to obtain an operating permit. The initial costs of obtaining an operating permit will include a permit fee of \$100.00 per building affected by the permit, plus an inspection fee of \$100.00 per building affected by the permit. DOS may require that a third-party inspector perform the required inspection; in such a case, the applicant will be required to pay the fees and expenses charged by the third-party inspector, but will not be required to pay the \$100 per building inspection fee that would otherwise be payable to DOS. The applicant will also be required to pay for any tests or reports that DOS may determine to be necessary to verify that the proposed activity or use complies with the applicable provisions of the Uniform Code.

The fee for renewing an operating permit will be one-half of the initial fee, and will be payable annually in the case of an operating permit issued for an area of public assembly and once every three years in any other case.

Any variation in the foregoing compliance costs for small businesses or local governments of different types and of differing sizes would be a factor of the types of buildings and structures typically owned by such small businesses or local governments. For example, a small business or local government that typically owns complex commercial buildings will incur higher costs for the construction documents that must accompany an application for a building permit than would a small business or local government that typically owns less complex commercial buildings or residential buildings. The compliance costs associated with the construction, alteration or demolition of any particular building is not likely to vary significantly by reason of the type or size of the small business or local government that constructs, alters or demolishes the building.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

It is economically and technologically feasible for small businesses and local governments to comply with the rule. This rule imposes no substantial new compliance costs. No new technology need be developed for compliance with this rule.

6. MINIMIZING ADVERSE IMPACT.

This rule is intended to further the legislative objective of ensuring that administration and enforcement of the Uniform Code be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1); it does so by amending Part 1202 to make the features of the DOS's code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of 19 NYCRR Part 1203.

In the opinion of DOS, establishing differing compliance or reporting requirements or timetables for small businesses and local governments or providing exemptions from coverage by the rule for small businesses and local governments would be detrimental to the foregoing objective and would endanger public health, safety or general welfare by reducing code enforcement standards with respect to buildings and structures owned by small businesses and local governments.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

In December of 2008, the Department of State sent a copy of the proposed rule to the chief executive officer of each of the fifteen opted-out counties, the Town of Conewango and several small businesses in the Town of Conewango by e-mail and/or by regular mail, and invited the opted-out counties, the Town of Conewango and those small businesses to contact the Department of State if they had any questions or comments. To date, no substantive comments have been received.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends 19 NYCRR Part 1202 ("Part 1202"), which sets forth the procedures applicable in circumstances in which the Department of State ("DOS") must administer and enforce the Uniform Fire Prevention and Building Code ("Uniform Code"). Currently, DOS administers and enforces the Uniform Code with respect to buildings and structures in the custody of the following fifteen counties (the "opted-out counties"): Allegany County, Cattaraugus County, Chautauga County, Clinton County, Essex County, Greene County, Hamilton County, Herkimer County, Madison County, Oneida County, Oswego County, Saratoga County, Schoharie County, St. Lawrence County, and Wayne County. Effective January 1, 2009, DOS will also be responsible for administering and enforcing the Uniform Code with respect to all buildings and structures, public and private, in the Town of Conewango in Cattaraugus County.

This rule will apply in the opted-out counties (as to buildings and structures in the custody of the opted-out counties) and in the Town of

Conewango. This rule will also apply in any county that elects to opt out in the future (as to buildings and structures in the custody of such county), and in any city, town or village in which DOS becomes responsible for administering and enforcing the Uniform Code in the future.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule will require regulated parties to file permit application forms and to obtain permits. However, regulated parties (other than opted-out counties) should now be subject to similar requirements under code enforcement programs that local governments are required to adopt under 19 NYCRR Part 1203. Further, except for the new provisions relating to operating permits to be added to Part 1202 by this rule, opted-out counties are now subject to similar paperwork requirements under the current version of Part 1202.

3. PROFESSIONAL SERVICES.

Regulated parties will be required to provide construction documents (plans, drawings and specifications) when they apply for a building or demolition permit. In most cases, construction documents must be stamped and signed by a registered architect or professional engineer. However, the requirement that permit applicants submit construction documents is not a new requirement added by this rule; it is a requirement which is established by statute (Executive Law section 7303(1)), which is reflected in the current version of Part 1202, and which should be reflected in code enforcement programs enacted by local governments that enforce the Uniform Code.

4. COMPLIANCE COSTS.

An opted-out county that builds, alters, or demolishes a building or structure will be required to obtain a building permit, demolition permit, or certificate of occupancy or completion. Regulated parties that build, alter, or demolish buildings or structures located in a local government in which DOS enforces the Uniform Code will be required to obtain building permits, demolition permits, and certificates of occupancy or completion. The initial costs of obtaining a building or demolition permit will include the costs of obtaining the construction documents and other documents needed to include in or with the application for the required permits, and the fees payable to obtain such permits.

The cost of the required construction documents (plans, specifications and drawings) will depend on the nature and scope of the project. DOS estimates that the cost of construction documents for a typical 1,500 square foot one-family dwelling will be approximately \$10,000 to \$18,000 (\$7.00 to \$12.00 per square foot). The cost of construction documents for commercial buildings will vary significantly, depending upon the use, size and complexity of the building. However, the requirement that construction documents be provided as part of a permit application is not a new requirement added by this rule. Part 1202 currently requires the submission of "three sets of plans and specifications for the proposed work." This rule would amend this requirement by providing that only two sets of construction documents need be submitted; this may reduce the cost of applying for a building or demolition permit in certain cases.

The fees to be paid to DOS for building permits or demolition permits are set forth in the current version of Part 1202, and will be set forth in section 1202.12 of the new version of Part 1202 to be added by this rule. This rule does not change those fees. Typical fees are as follows: \$200 for a building permit for a 1,500 square foot one-family dwelling; \$300 for a building permit for a 2,500 square foot one-family dwelling; \$200 per 1,000 square feet for a building permit for a multiple dwelling or other general construction; and \$50 for a demolition permit. This rule continues provisions which are found in the current version of Part 1202 and which allow DOS to require the use of a third-party inspector to perform required inspections. This rule also adds provisions which allow DOS to require the use of a third-party reviewer to review permit applications. Permit applicants will be required to pay the fees and expenses charged by any third-party inspector or third-party reviewer; however, in either such case, the fee payable to DOS for the permit will be reduced.

The fee for renewing a building permit or demolition permit will be one-half of the original permit fee.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to obtain an operating permit. The initial costs of obtaining an operating permit will include a permit fee of \$100.00 per building affected by the permit, plus an inspection fee of \$100.00 per building affected by the permit. DOS may require that a third-party inspector perform the required inspection; in such a case, the applicant will be required to pay the fees and expenses charged by the third-party inspector, but will not be required to pay the \$100 per building inspection fee that would otherwise be payable to DOS. The applicant will also be required to pay for any tests or reports that DOS may determine to

be necessary to verify that the proposed activity or use complies with the applicable provisions of the Uniform Code.

The fee for renewing an operating permit will be one-half of the initial fee, and will be payable annually in the case of an operating permit issued for an area of public assembly and once every three years in any other case.

Any variation in the foregoing compliance costs for different types of public and private entities in rural areas would be a factor of the types of buildings and structures typically owned by such entities. For example, a public or private entity that typically owns complex commercial buildings will incur higher costs for the construction documents that must accompany an application for a building permit than would a public or private entity that typically owns less complex commercial buildings or residential buildings. The compliance costs associated with the construction, alteration or demolition of any particular building is not likely to vary significantly by reason of the type of entity that constructs, alters or demolishes the building.

5. MINIMIZING ADVERSE IMPACT.

This rule is intended to further the legislative objective of ensuring that administration and enforcement of the Uniform Code be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1); it does so by amending Part 1202 to make the features of the DOS's code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of 19 NYCRR Part 1203.

In the opinion of DOS, establishing differing compliance or reporting requirements or timetables for rural areas or providing exemptions from coverage by the rule in rural areas would be detrimental to the foregoing objective and would endanger public health, safety or general welfare by reducing code enforcement standards in rural areas.

6. RURAL AREA PARTICIPATION.

In December of 2008, the Department of State sent a copy of the proposed rule to the chief executive officer of each of the fifteen opted-out counties, the Town of Conewango and several small businesses in the Town of Conewango by e-mail and/or by regular mail, and invited the opted-out counties, the Town of Conewango and those small businesses to contact the Department of State if they had any questions or comments. To date, no substantive comments have been received.

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.

Part 1202 of Title 19 NYCRR establishes the procedures applicable in circumstances in which the Department of State must administer and enforce the State Uniform Fire Prevention and Building Code (the Uniform Code) in the place and stead of a local government or county. This rule amends Part 1202.

Regulated parties that build, alter or demolish buildings in local governments in which the Department of State enforces the Uniform Code will be required to apply for and obtain building or demolition permits and certificates of occupancy or completion. However, regulated parties currently are, or should be, subject to substantially similar obligations under code enforcement programs adopted by local governments pursuant to the mandate of Part 1203 of Title 19 NYCRR or under the current version of Part 1202.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly areas with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to apply for, obtain and maintain an operating permit. Counties that have elected not to enforce the Uniform Code (the "opted-out counties") and that engage in such activities or uses are not currently subject to operating permit requirements. This rule will extend those requirements to the opted-out counties. However, all other regulated parties currently are, or should be, subject to substantially similar operating permit requirements under code enforcement programs adopted by local governments pursuant to the mandate of Part 1203 of Title 19 NYCRR.

Based on the foregoing, it is anticipated that this rule will have no significant adverse impact on jobs or employment opportunities in the building industry, or in any related businesses or industry.

State University of New York

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-09-00009-EP

Filing No. 816

Filing Date: 2009-07-14

Effective Date: 2009-07-14

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

Proposed Action: Amendment of section 302.1(c) - (i) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases will be required for the State University operating budget effective for the Fall 2009 semester. Billing for these new tuition rates occurs during the summer of 2009, therefore, notice of the new rates needs to occur as soon as possible.

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

Purpose: To amend the Tuition and Fees Schedule to increase tuition for resident students in graduate and professional programs.

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

(c)(1) Students enrolled in graduate programs leading to a master's, doctor's or equivalent degree with the exception of those degrees set forth in paragraph (2) of this subdivision.

Tuition

(i) Students, New York State residents: [\$3,940]\$4,185 per semester or [\$2,627]\$2,790 per quarter.

(ii) Students, out-of-state residents: \$6,625 per semester or \$4,417 per quarter.

(iii) Special students, New York State residents: [\$328]\$349 per semester credit hour or [\$219]\$233 per quarter credit hour.

(iv) Special students, out-of-state residents: \$552 per semester credit hour or \$368 per quarter credit hour.

(2) Students enrolled in graduate programs leading to a master of business administration degree (M.B.A.).

Tuition

(i) Students, New York State residents: [\$4,055]\$4,305 per semester or [\$2,703]\$2,870 per quarter.

(ii) Students, out-of-state residents: \$6,880 per semester or \$4,587 per quarter.

(iii) Special students, New York State residents: [\$338]\$359 per semester credit hour or [\$225]\$239 per quarter credit hour.

(iv) Special students, out-of-state residents: \$573 per semester credit hour or \$382 per quarter credit hour.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(d) Students enrolled in the professional program of pharmacy.

Tuition

(1) Students, New York State residents: [\$7,825] \$8,310 per semester or [\$5,217]\$5,540 per quarter.

(2) Students, out-of-state residents: \$14,375 per semester or \$9,583 per quarter.

(3) Special students, New York State residents: [\$652]\$693 per semester credit hour or [\$435]\$462 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,198 per semester credit hour or \$799 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(e) Students enrolled in the professional program of law (J.D. and LL.M).

Tuition

(1) Students, New York State residents: [\$7,535] \$8,005 per semester or [\$5,023] \$5,337 per quarter.

(2) Students, out-of-state residents: \$12,130 per semester or \$8,087 per quarter.

(3) Special students, New York State residents: [\$628]\$667 per semester credit hour or [\$419]\$445 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,011 per semester credit hour or \$674 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(f) Students enrolled in medicine programs.

Tuition

(1) Students, New York State residents: [\$10,735]\$11,400 per semester or [\$7,157]\$7,600 per quarter.

(2) Students, out-of-state residents: \$20,320 per semester or \$13,547 per quarter.

(3) Special students, New York State residents: [\$895]\$950 per semester credit hour or [\$596]\$633 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,693 per semester credit hour or \$1,129 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(g) Students enrolled in dentistry programs.

Tuition

(1) Students, New York State residents: [\$9,250]\$9,825 per semester or [\$6,167]\$6,550 per quarter.

(2) Students, out-of-state residents: \$19,710 per semester or \$13,140 per quarter.

(3) Special students, New York State residents: [\$771]\$819 per semester credit hour or [\$514]\$546 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,643 per semester credit hour or \$1,095 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

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

Tuition

(1) Students, New York State residents: [\$6,520] \$6,925 per semester or [\$4,347] \$4,617 per quarter.

(2) Students, out-of-state residents: \$11,095 per semester or \$7,397 per quarter.

(3) Special students, New York State residents: [\$543]\$577 per semester credit hour or [\$362]\$385 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$925 per semester credit hour or \$616 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(i) Students enrolled in optometry programs.

Tuition

(1) Students, New York State residents: [\$7,775] \$8,260 per semester or [\$5,183] \$5,507 per quarter.

(2) Students, out-of-state residents: \$15,860 per semester or \$10,573 per quarter.

(3) Special students, New York State residents: [\$648]\$688 per semester credit hour or [\$432]\$459 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,322 per semester credit hour or \$881 per quarter credit hour or equivalent.

The Chancellor shall determine the equivalent of a credit hour.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 11, 2009.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, Paralegal, State University of New York, Office of University Counsel, State University Plaza, S-325, Albany, New York 12246, (518) 443-5400, email: Lisa.Campo@SUNY.edu

Data, views or arguments may be submitted to: Marti Anne Ellermann, Senior Counsel, State University of New York, State University Plaza, S-331, Albany, New York 12246, (518) 443-5400, email: Marti.Ellermann@SUNY.edu

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University. In accordance with Section 355(2)(h)(4) of the Education Law, no change in tuition can be made effective prior to enactment of the annual budget for the State University of New York. Chapter 53 of the Laws of 2009 enacted the appropriations for the operations of the State University of New York during the 2009-2010 fiscal year, including necessary tuition revenue.

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

3. Needs and Benefits: The present measure establishes a series of tuition increases for resident students in certain graduate and professional degree programs of the State University of New York as necessitated by the 2009-2010 State Budget effective with the Fall 2009 semester.

The tuition changes authorized by this measure affect certain resident students in graduate and professional schools within the State University of New York: the Schools of Law and Pharmacy at the State University of New York at Buffalo, the Schools of Dental Medicine and the Professional Programs in Physical Therapy at State University of New York at Buffalo and Stony Brook. Nonresident students in these programs received a tuition increase in the Spring 2009 semester.

This measure is needed in order to provide essential financial support for the State-operated campuses of the State University of New York for the 2009-2010 fiscal year and thereafter. The enacted budget for 2009-10 includes an assumption of a 21 percent increase in the tuition rates for resident graduate and professional students over Fall 2008 levels. There is a corresponding decrease in state general fund tax support; therefore, to fully fund the State University's operating budget, it is necessary to raise these tuition rates an additional amount beyond the Spring 2009 increase.

This amendment affects all professional programs within the State University of New York. Tuition for New York State residents at the School of Law will increase to \$16,010 per year, and at the Pharmacy School to \$16,620 per year.

The amendment also increases tuition for resident students in the professional dental program (D.D.S.) at the Universities at Buffalo and Stony Brook to \$19,650 per year.

Tuition for resident students in the medical programs at the four Health Science Centers would see tuition increase to \$22,800.

The amendment increases to \$16,520 per year the tuition for resident students at the School of Optometry.

The amendment increases tuition for resident students pursuing the terminal Professional Degree in Physical Therapy and the Doctor of Nursing Practice program to \$13,850 per year.

Graduate tuition would also increase by \$490 for resident students in the non-MBA program, to \$8,370 per year, and by \$500, to \$8,610 annually, for resident students in the MBA program.

4. Costs: Resident students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$490 per year for nonMBA graduate programs to \$1,330 for the Schools of Medicine. The tuition increases will affect students in these programs as shown:

	\$Increase
Dental	\$1150
Pharmacy	970
Law	940
P. Therapy	810
Nursing	810
Optometry	970
Medicine	1330
Graduate tuition	
NonMBA	490
MBA	500

Increases in non-resident tuition rates for the graduate and professional programs for the Spring 2009 semester were 21% and the increase for residents was 14%. This additional increase for resident graduate and professional program tuition rates is an additional 7% to bring them to a 21% increase from 2008 levels overall. This is necessary due to the cuts in appropriation levels which must be filled by tuition revenue.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

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

7. Duplication: None.

8. Alternatives: The alternative of not increasing tuition in these programs was considered, however, given the 2009-2010 State budget which contained the assumption of additional tuition revenue to fund the University's operations, this alternative was not acceptable. Without increasing tuition, there would have to be additional cuts in support across all the state-operated campuses of the State University Higher increases would have created additional financial hardships for students. Student input regarding the increases was considered by the State University Board of Trustees, including a presentation made by students at a Board meeting.

9. Federal Standards: None.

10. Compliance Schedule: Compliance with the amendment will go into effect for the Fall 2009 semester. Bills reflecting the increases will be sent out to registered students by the campuses and payment of these bills will be due in accordance with State University policy.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Actions Taken at June 18, 2009, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on June 18, 2009, in Binghamton, New York, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: 1) approved, modified, and tabled certain water resources projects; 2) approved two water resources projects involving diversions; 3) rescinded approval for one water resources project; 4) approved settlements involving three water resources projects; and 5) considered two requests for an administrative hearing on projects previously approved by the Commission. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: June 18, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: 1) recognition of Col. Peter Mueller, alternate United States Member of the Commission, who is departing his position as Baltimore District Engineer in July 2009; 2) a report on the present hydrologic conditions of the basin indicating recovery from winter precipitation deficits; 3) a presentation on SRBC's

Flooding "Priority Management Area" with additional information on the third anniversary of the June 2006 flood and enhancements to flood warning and preparedness; 4) presentation of the Maurice K. Goddard Award to David Nicosia of the National Weather Service, Binghamton Office; 5) adoption of an Application Fee Policy for Mine Drainage Withdrawals to guide the granting of fee waivers or reductions to projects using water impaired by abandoned mine drainage; 6) approval for proposed rulemaking regarding Commission approval of projects undergoing federal licensing/relicensing of and other revisions; 7) revisions to the FY-2010 budget commencing July 1, 2009; 8) adoption of a FY-2011 budget commencing July 1, 2010; 9) ratification of a contract with the U.S. Geological Survey on simulation of baseline streamflow conditions, and approval of a grant application to the Pennsylvania Infrastructure Investment Authority (PENNVEST) regarding expansion of an innovative stormwater management project at the Pennsylvania Farm Show Complex; and 10) election of the member representing the U.S. Government as the new Chair of the Commission and the member representing the State of New York as the new Vice Chair of the Commission to serve in the next fiscal year. The Commission also heard counsel's report on legal matters affecting the Commission.

The Commission also convened a public hearing and took the following actions:

Public Hearing – Projects Approved

1. Project Sponsor and Facility: ALTA Operating Company, LLC (Turner Lake), Liberty Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.393 mgd.
2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Chemung River), Athens Township, Bradford County, Pa. Surface water withdrawal of up to 0.999 mgd.
3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Sugar Creek), Burlington Township, Bradford County, Pa. Surface water withdrawal of up to 0.499 mgd.
4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River – Newton), Terry Township, Bradford County, Pa. Surface water withdrawal of up to 0.999 mgd.
5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River – McCarthy), Wyalusing Township, Bradford County, Pa. Surface water withdrawal of up to 1.440 mgd.
6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek – Monroe Hose), Monroe Township, Bradford County, Pa. Surface water withdrawal of up to 0.400 mgd.
7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek – DeCristo), Leroy Township, Bradford County, Pa. Surface water withdrawal of up to 0.499 mgd.
8. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek – Vanderfeltz), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.499 mgd.
9. Project Sponsor and Facility: Citrus Energy (Inez Moss Pond), Benton Township, Columbia County, Pa. Surface water withdrawal of up to 0.099 mgd.
10. Project Sponsor and Facility: East Resources, Inc. (Tioga River – Greer), Richmond Township, Tioga County, Pa. Surface water withdrawal of up to 0.107 mgd.
11. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Little Muncy Creek – LYC-01, Jordan), Franklin Town, Lycoming County, Pa. Surface water withdrawal of up to 0.041 mgd.
12. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Little Muncy Creek – LYC-02, Temple), Franklin Town, Lycoming County, Pa. Surface water withdrawal of up to 0.091 mgd.
13. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (South Branch Tunkhannock Creek – WSC), Benton Township, Lackawanna County, Pa. Surface water withdrawal of up to 0.091 mgd.
14. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (West Branch Susquehanna River – Sproul State Forest), Burnside Township, Centre County, Pa. Surface water withdrawal of up to 1.080 mgd.
15. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Three Mile Island Generating Station, Unit 1, Londonderry Township, Dauphin County, Pa. Modification to project features of the consumptive water use approval (Docket No. 19950302).
16. Project Sponsor and Facility: Grand Water Rush, LLC (Grand Farm Pond), Dunnstable Township, Clinton County, Pa. Surface water withdrawal of up to 0.022 mgd.

17. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Hollywood AMD Treatment Plant, Huston and Jay Townships, Clearfield and Elk Counties, Pa. Groundwater withdrawal of up to 2.890 mgd from six deep mine complexes.
18. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, Pa. Groundwater withdrawal of up to 7.400 mgd from Recovery Wells 1, 2, and 3, and D Seam Discharge.
19. Project Sponsor: PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Redevelopment modifications of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.
20. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Groundwater withdrawal of up to 0.362 mgd from the Gordon Well.
21. Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek – Price), Gibson Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.380 mgd.
22. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek – Hogan), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.750 mgd.
23. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek – Stang), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.750 mgd.
24. Project Sponsor and Facility: Susquehanna Gas Field Services, L.L.C. (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Surface water withdrawal of up to 0.100 mgd.
25. Project Sponsor: Titanium Metals Corporation. Project Facility: Titanium Hearth Technologies, Inc., d.b.a. TIMET North American Operations, Caernarvon Township, Berks County, Pa. Groundwater withdrawal of up to 0.099 mgd from Well 1.
26. Project Sponsor and Facility: Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, Pa. Surface water withdrawal of up to 0.020 mgd.
27. Project Sponsor and Facility: Valley Country Club, Sugarloaf Township, Luzerne County, Pa. Groundwater withdrawal of up to 0.090 mgd from the Pumphouse Well and 0.090 mgd from the Shop Well.

Public Hearing – Projects Tabled

1. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for groundwater withdrawal of 0.099 mgd from Laurel Springs.
2. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for consumptive water use of up to 0.099 mgd.
3. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Black Moshannon Creek), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 0.140 mgd.
4. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek – Franklin Township Volunteer Fire Department), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.000 mgd.
5. Project Sponsor and Facility: J-W Operating Company (Abandoned Mine Pool – Unnamed Tributary to Finley Run), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.
6. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for consumptive water use of up to 0.870 mgd.
7. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

Public Hearing – Projects Withdrawn

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek – Wells), Wyalusing Borough, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.
2. Project Sponsor and Facility: EXCO-North Coast Energy, Inc.

(East Branch Tunkhannock Creek), Clifford Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.130 mgd.

Public Hearing – Projects Approved Involving Diversions

1. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, Pa. Into-basin diversion of up to 10.000 mgd from the Ohio River Basin.
2. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Out-of-basin diversion of up to 0.428 mgd to the Delaware River Basin for water supply; and an existing into-basin diversion of up to 0.485 mgd from the Delaware River Basin.

Public Hearing – Rescission of Project Approval

1. Project Sponsor: Corning Incorporated; Fall Brook Facility (Docket No. 19960301), Corning, Steuben County, N.Y.

Public Hearing – Enforcement Actions

The Commission approved settlements in lieu of civil penalties for the following projects:

1. Belden & Blake Corporation (EnerVest Operating, LLC) - \$150,000
2. Chester County Solid Waste Authority - \$51,000
3. East Resources, Inc. (Tioga River) - \$75,000

Public Hearing – Administrative Appeals

1. Docket No. 20081203 from petitioner Mark A. Givler, Esq. – The Commission granted Mr. Givler’s request to supplement his filing, but denied his request for an administrative hearing and his request to reopen the docket.
2. Docket No. 20090315, from petitioner Delta Borough – The Commission tabled action on this appeal at the request of the petitioner.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: July 8, 2009.

Thomas W. Beauduy,
Deputy Director.