

# 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.

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## Department of Correctional Services

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

#### Inmate Correspondence Program

**I.D. No.** COR-09-09-00001-P

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

**Proposed Action:** This is a consensus rule making to amend section 720.8(a)(5) of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Inmate Correspondence Program.

**Purpose:** Ensure regulation is consistent with current policy regarding “stamp buys” for inmates admitted to Special Housing Units.

**Text of proposed rule:** The Department of Correctional Services amends 7NYCRR, section 720.8(a)(5) as indicated below:

(5) An inmate who has lost commissary privileges[, including one who has been admitted to a SHU,] shall be able to make a monthly “stamp buy” of up to 50 domestic first class stamps for one ounce letters. This special buy shall be offered within 72 hours of the imposition of the penalty and every 30 days thereafter. *Inmates who have been admitted to a Special Housing Unit shall be offered a “stamp buy” within 72 hours of admission and every 30 days thereafter.*

**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@DOCS.state.ny.us

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

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

#### Consensus Rule Making Determination

In accordance with Correction Law section 112, the Commissioner of the Department of Correctional Services is designated with the superintendence, management and control of correctional facilities in the department and of the inmates confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. This rulemaking is being proposed to simply clarify established Department policy with regard to the offering of a “stamp buy” for inmates who have been admitted to a Special Housing Unit (SHU) in accordance with section 302.2(h)(i) of 7NYCRR. The current wording of regulation section 720.8(a)(5) of this title could be interpreted to mean that an inmate admitted to SHU may have to wait until the conclusion of their disciplinary hearing and possible imposition of disciplinary sanctions before they would be eligible for their “stamp buy”. A disciplinary hearing can last up to 14 days or longer if an extension is granted. This change is to ensure that current Department policy is accurately reflected in the regulation whereby inmates who are admitted to SHU pending a disciplinary hearing are offered a “stamp buy” with 72 hours of admission. This amendment represents established policy and is being made in order to be consistent with section 302.2(h)(i) of this title. Therefore, the Department has determined that no person is likely to object to the adoption of this proposed rulemaking because it is essentially non-controversial in nature (SAPA 102 (11)(e)).

#### Job Impact Statement

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

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

#### Earned Eligibility Program

**I.D. No.** COR-09-09-00013-P

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

**Proposed Action:** This is a consensus rule making to amend sections 2100.1 and 2100.4(b) of Title 7 NYCRR.

**Statutory authority:** Correction Law, sections 112 and 805

**Subject:** Earned Eligibility Program.

**Purpose:** To update the regulation consistent with Correction Law and to update the title of a Department inmate program.

**Text of proposed rule:** The Department of Correctional Services amends 7NYCRR, sections 2100.1 and 2100.4(b) as indicated below:

Section 2100.1 Statement of purpose.

This Part sets forth the policies and procedures governing the earned eligibility program. Consideration for this program is available to any inmate serving an indeterminate sentence with a minimum term of not more than *eight*[six] years.

(b) The guidance unit will coordinate a comprehensive evaluation of each inmate’s program files and records. This evaluation shall include all files and records regarding counseling, education, occupational training, family services, ministerial services, *transitional services*[pre-release], temporary release, alcohol and substance abuse treatment, network, special subjects, and any other appropriate programs and activities in which the inmate has participated. All other facility staff will assist and participate in conducting this evaluation as assigned or requested.

**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.Boll2DOCS.state.ny.us

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

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

#### Consensus Rule Making Determination

In accordance with Correction Law section 112, the Commissioner of the Department of Correctional Services is designated with the superintendence, management and control of correctional facilities in the department and of the inmates confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. Section 805 of Correction Law mandates that "an inmate who is serving a sentence with a minimum term of not more than eight years and who has been issued a certificate of Earned Eligibility, shall be granted parole release supervision at the expiration of his minimum term....". This section of Correction Law was revised effective September 1, 2007 to reflect a change from six to eight years. The amendment to 7NYCRR, Part 2100.1 is being made to bring the regulation into compliance with Correction Law 805, changing six years to eight years. The amendment to section 2100.4(b) is being made to update the reference to a Department program that has changed its functional name in recent years from "pre-release" to "transitional services". The Department has determined that no person is likely to object to the adoption of this proposed rulemaking because they are technical and non-controversial in nature (SAPA 102 (11)(c)).

#### Job Impact Statement

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

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## Education Department

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### NOTICE OF ADOPTION

#### State Library's Policy and Practice Relating to Borrowing Library Materials

**I.D. No.** EDU-48-08-00022-A

**Filing No.** 155

**Filing Date:** 2009-02-17

**Effective Date:** 2009-03-05

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

**Action taken:** Amendment of section 92.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided) and 249 (not subdivided)

**Subject:** State Library's policy and practice relating to borrowing library materials.

**Purpose:** To conform Commissioner's Regulations to the State Library's current policy and practice relating to borrowing library materials.

**Text or summary was published** in the November 26, 2008 issue of the Register, I.D. No. EDU-48-08-00022-P.

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

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

#### Assessment of Public Comment

The agency received no public comment.

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

#### Public Library Systems

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

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

**Proposed Action:** Amendment of section 90.3 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided),

215(not subdivided), 254(not subdivided), 255(1 through 5), 272(1)(h) and 273(1)

**Subject:** Public library systems.

**Purpose:** To update terminology and clarify procedures relating to State aid for public library systems.

**Substance of proposed rule (Full text is not posted on a State website):** The Board of Regents proposes to amend section 90.3 of the Regulations of the Commissioner of Education, effective June 11, 2009. The proposed amendment is necessary to update certain terminology and clarify procedures relating to coordinated outreach services, family literacy library services and adult literacy library services.

Section 90.3(l), relating to coordinated outreach services, is amended to add "developmentally or learning disabled" to the special populations who are served by coordinated outreach; to require that the plan of service include a description of efforts to assist libraries to comply with state and federal laws regarding coordinated outreach target populations; to delete a requirement that the plan of service include a description of expanded programming, use and maintenance of an optical scanner for use by the blind and physically handicapped in accordance with the Laws of 1979, Chapter 660; to replace the requirement that the system employ at least one full-time "certified professional librarian", with "professional librarian who holds or is eligible to receive a New York State public librarian's professional certificate"; to specify that the advisory council be composed of one director or a member library, representatives of agencies who serve the target population groups detailed below; and persons who are educationally disadvantaged, members of ethnic or minority groups in need of special library services, unemployed and in need of job placement assistance, living in areas underserved by a library, blind, physically disabled, developmentally or learning disabled, aged or residents of institutions; and to specify that a budget application and narrative describing a public library's coordinated outreach services program be submitted in a format prescribed by the department.

Education Law section 90.3(m), relating to enriched coordinated outreach programs, is amended to retitle such programs "family literacy library services grant programs"; to define "public library service program for family literacy" and "member library"; to delete a requirement that approved projects be under the supervision of a professional librarian; to specify that grant applications be submitted a format and according to a timetable prescribed by the commissioner; to include within the criteria for approval of an application: documentation of a need in the community for such a project, the quality of the project plan, and appropriate means for evaluation of the project including quantitative and qualitative measures; to exclude within eligible costs, personnel expenses for existing full-time library or library system staff; to include within eligible costs, appropriate means for project evaluation including quantitative and qualitative measures and an explanation of how evaluation results will be used, and such other costs as may be approved by the commissioner; to specify that costs ineligible for approval shall include, but shall not be limited to: (1) building modification or construction, (2) overhead or administrative costs; and (3) subsidizing personnel expenses for existing full-time library or library system staff.

Education Law section 90.3(n), relating to adult literacy services, is amended to retitle such services as "adult literacy library services grant program"; to define "public library service program for adult literacy" to mean any targeted projects or activities or library services which assist adults to improve their literacy skills and which are provide at no cost to the individuals served, by library systems or member libraries; to define "member library" to mean a chartered and registered public, free association or Indian library, as defined in section 253 of the Education Law, which is a member of a public library system; to specify that libraries shall be chartered and registered pursuant to Education Law sections 254 and 255 in order to be eligible to apply for grants; to specify that grant applications be submitted in a format and according to a timetable prescribed by the commissioner; to specify that the commissioner may establish a theme, priority, or other parameter for adult literacy library services program grant projects; to include among the criteria for approval of an application, documentation of a need in the community for such a project, the quality of the project plan and community involvement, the potential to be replicated, description of a means for disseminating information about project design, implementation and results, and appropriate means for evaluation of the project including quantitative and qualitative measures and an explanation of how evaluation results will be used; to exclude within eligible costs, personnel expenses for existing full-time library or library system staff; to include within eligible costs, appropriate means for project evaluation including quantitative and qualitative measures and an explanation of how evaluation results will be used; to specify that costs ineligible for approval shall also include, but shall not be limited to, subsidizing personnel expenses for existing full-time library or library system staff; and to delete requirements for the submission of a final project report upon completion of a project by a public library system or member library.

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

**Data, views or arguments may be submitted to:** Jeffrey W. Cannell, Deputy Commissioner for Cultural Ed., New York State Education Department, Office of the State Librarian, Room 10C34 Cultural Education Center, Albany, NY 12230, (518) 474-5930, email: ppaolucc@mail.nysed.gov

**Public comment will be received until:** 60 days after publication of this notice.

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

#### **Regulatory Impact Statement**

##### 1. STATUTORY AUTHORITY:

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

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the education supervision of the State and require reports from such schools.

Section 254 of the Education Law authorizes the Regents to fix standards of library service for public libraries.

Section 255 of the Education Law provides for the establishment of public libraries and cooperative library systems.

Section 272 of the Education Law defines "public library systems" and sets forth the conditions under which they are entitled to State aid. Section 272(1)(h) authorizes the Commissioner to adopt regulations to provide the standard of service with which public library systems must comply.

Section 273 of the Education Law provides for state aid to libraries and library systems providing service under an approved plan.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by updating and clarifying certain terminology relating to the functions of and State aid for public library systems.

##### 3. NEEDS AND BENEFITS:

The proposed amendment is needed to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations relating to the approval of public library systems, specifically the Coordinated Outreach Services, Family Literacy Library Services grant program (formerly the "enriched coordinated outreach programs"), and Adult Literacy Library Services grant programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

Specifically, the proposed rule adds the definition of "developmentally or learning disabled" to the special populations who are served by coordinated outreach. The "Enriched coordinated outreach program" has been replaced with a more appropriate name, the "Family Literacy Library Services Grant Program." Current operations of library systems are more accurately reflected and references to obsolete practices and terms are omitted.

##### 4. COSTS:

(a) Costs to the State government. The amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local government: The proposed amendment will not impose any additional costs upon local government.

(c) Costs to private, regulated parties: none.

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

The proposed amendment merely clarifies procedural requirements and updates certain terminology in section 90.3 of the Commissioner's Regulations relating to public library systems, in order to accurately reflect the statutory intent and current implementation of Education

Law section 273. The proposed amendment does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department.

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment is merely needed to clarify procedural requirements and update certain terminology in section 90.3 of the Commissioner's Regulations, in order to accurately reflect the statutory intent and current implementation of Education Law section 273.

##### 6. PAPERWORK:

The proposed amendment does not require any additional paperwork requirements.

##### 7. DUPLICATION:

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

##### 8. ALTERNATIVES:

The proposed amendment merely updates procedural requirements and clarifies certain terminology relating to public library systems, in order to accurately reflect the statutory intent and current implementation of Education Law section 273. There were no significant alternatives to the proposed amendment, and none were considered.

##### 9. FEDERAL STANDARDS:

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

##### 10. COMPLIANCE STANDARDS:

The proposed amendment would take effect on its stated effective date. It is anticipated that the regulated parties would come into compliance with the amendment on or immediately following such date. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

#### **Regulatory Flexibility Analysis**

##### (a) Small Businesses:

The purpose of the proposed amendment is to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations, relating to the approval of public library systems; specifically the Coordinated Outreach Services, Family Literacy Library Services grant programs (formerly the "enriched coordinated outreach programs"), and Adult Literacy Library Services grant programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute. The amendment does not impose any reporting, recordkeeping, or compliance requirements on small businesses and will not have an adverse economic impact on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one was not prepared.

##### (b) Local Governments:

##### 1. EFFECT OF RULE:

The proposed amendment will affect all counties, cities, villages, towns, school districts or other body authorized to levy and collect taxes, which have established public libraries that are part of a public library system. Of the 753 public libraries that are members of public library systems, 189 are school district public libraries, 43 are special district public libraries, and 521 are other types of public libraries.

##### 2. COMPLIANCE REQUIREMENTS:

The amendment does not directly impose any compliance requirements on local governments. The proposed amendment is needed to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations relating to the approval of public library systems, specifically the Coordinated Outreach Services, Family Literacy Library Services grant program (formerly the "enriched coordinated outreach programs"), and Adult Literacy Library Services grant programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

Specifically, the proposed rule adds the definition of “developmentally or learning disabled” to the special populations who are served by coordinated outreach. The “Enriched coordinated outreach program” has been replaced with a more appropriate name, the “Family Literacy Library Services Grant Program.” Current operations of library systems are more accurately reflected and references to obsolete practices and terms are omitted.

### 3. PROFESSIONAL SERVICES:

The proposed amendment applies to public library systems and imposes no additional professional service requirements on local governments.

### 4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. The proposed amendment merely updates certain terminology and clarifies procedural requirements relating to approval of public library systems; specifically the Coordinated Outreach Services, Family Literacy Library Services, and Adult Literacy Library Services programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

### 6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments. The proposed amendment merely updates certain terminology and clarifies procedural requirements in the Commissioner’s Regulations relating to the approval of public library systems, in order to accurately reflect the statutory intent and current implementation of section 273 of the Education Law. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on regulated parties.

### 7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from public library system directors in various regions of the State.

#### *Rural Area Flexibility Analysis*

#### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to public library systems, including those in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less. In the 44 rural counties there are 433 public libraries. In the 71 towns, approximately 40 have public libraries.

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

The purpose of the proposed amendment is to update certain terminology and to clarify procedural requirements in the Commissioner’s Regulations, relating to the approval of public library systems; specifically the Coordinated Outreach Services, Family Literacy Library Services grant programs (formerly the “enriched coordinated outreach programs”), and Adult Literacy Library Services grant programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute. The proposed amendment will not impose any additional reporting, recordkeeping, or other compliance requirements or professional services requirements on public library systems located in rural areas.

Specifically, the proposed rule adds the definition of “developmentally or learning disabled” to the special populations who are served by coordinated outreach. The “Enriched coordinated outreach program” has been replaced with a more appropriate name, the “Family Literacy Library Services Grant Program.” Current operations of library systems are more accurately reflected and references to obsolete practices and terms are omitted.

### 3. COSTS:

The proposed amendment does not impose any costs on public library systems located in rural areas. The proposed amendment

merely updates certain terminology and clarifies procedural requirements relating to approval of public library systems; specifically the Coordinated Outreach Services, Family Literacy Library Services, and Adult Literacy Library Services programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on public library systems located in rural areas. The proposed amendment merely updates certain terminology and clarifies procedural requirements in the Commissioner’s Regulations relating to the approval of public library systems, in order to accurately reflect the statutory intent and current implementation of Education Law section 273. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on regulated parties. In order to ensure uniform, State-wide high standards for public library systems, the proposed amendment applies State-wide and, accordingly, it was not possible to provide for a lesser standard or exemption for rural areas.

### 5. RURAL AREA PARTICIPATION:

The proposed amendment has been sent for comment to public library system directors in various regions of the State, including those in rural areas.

#### *Job Impact Statement*

The purpose of the proposed amendment is to update certain terminology and to clarify procedural requirements in the Commissioner’s Regulations, relating to the approval of public library systems; specifically the Coordinated Outreach Services, Family Literacy Library Services grant programs (formerly the “enriched coordinated outreach programs”), and Adult Literacy Library Services grant programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute. The amendment will not affect jobs or employment opportunities in this or any field. Because it is evident from the nature of the proposed rule that it will have no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Physical Education Instruction, Coaching Qualifications, and Extension of Eligibility for Interscholastic Athletics

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

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

**Proposed Action:** Amendment of section 135.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 803(5) and 3204(2)

**Subject:** Physical education instruction, coaching qualifications, and extension of eligibility for interscholastic athletics.

**Purpose:** To revise physical education instruction requirements for elementary programs and establish qualifications and appropriate training of coaches.

**Text of proposed rule:** 1. Subparagraph (i) of paragraph (2) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective June 11, 2009, as follows:

(i) Elementary instructional program—grades K through 6. *Pupils in grades K - 6 shall participate in the physical education program as follows:*

(a) all pupils in grades K-3 shall participate in the physical education program on a daily basis. All pupils in grades 4-6 shall participate in the physical education program not less than three times each week. The minimum time devoted to such programs (K-6) shall be at least 120 minutes in each calendar week, exclusive of any time that may be required for dressing and showering;

(b) *pupils in grades 5-6 that are in a middle school shall participate in the physical education program a minimum of three periods per calendar week during one semester of each school year and two periods*

during the other semester, or a comparable time each semester if the school is organized in other patterns; or

(c) as provided in an equivalent program approved by the Commissioner of Education;

2. Paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective June 11, 2009, as follows:

(7) Basic code for extraclass athletic activities. Athletic participation in all schools shall be planned so as to conform to the following:

(i) General provisions. It shall be the duty of trustees and boards of education:

(a) to conduct school extra class athletic activities in accordance with this Part and such additional rules consistent with this basic code as may be adopted by such boards relating to items not covered specifically in this code. A board may authorize appropriate staff members to consult with representatives of other school systems and make recommendations to the board for the enactment of such rules;

(b) to make the extra class athletic activities an integral part of the physical education program;

(c) to [permit] appoint individuals, whether in a paid or non-paid (volunteer) status, to serve as coaches of interschool athletic teams, other than intramural teams or extramural teams, in accordance with the following:

(1) [certified] Certified physical education teachers may coach any sport in any school[.];

(2) [teachers] Teachers with coaching qualifications and experience certified only in areas other than physical education may coach any sport in any school, provided they have completed:

(i) the first aid requirement set forth in section 135.5 of this Part; and

(ii) an approved pre-service or in-service education program for coaches or will complete such a program within three years of appointment. Such program shall include an approved course in philosophy, principles and organization of athletics which shall be completed within two years after initial appointment as a coach. Upon application to the Commissioner of Education, setting forth the reasons for which an extension is necessary, the period in which to complete such training may be extended to no more than [five] seven years after such appointment. Such approved programs for coaches will consist of one of the following (credits and hours vary depending upon the contact and endurance involved in the sport): a department- approved college program of from two to eight credits; or a department approved in-service education program, conducted by schools, colleges, professional organizations or other recognized groups or agencies, from 30 to 120 clock hours; or an equivalent experience which is approved by the Commissioner of Education[.];

(iii) Coaches who have a lapse in service due to maternity leave, military leave, or other extenuating circumstances may apply in a format prescribed by the Commissioner for an additional extension to complete course work. Such application must set forth the reasons for which an extension is necessary. The period in which to complete such training shall be extended to no more than two additional years.

(3) [temporary] Temporary coaching license. Except as provided in subclause (4) of this clause and notwithstanding the provisions of section 80-5.10 of this Title, other persons with coaching qualifications and experience satisfactory to the board of education may be [employed] appointed as temporary coaches of interschool sport teams whether in a paid or non-paid (volunteer) status, when certified teachers with coaching qualifications and experience are not available, upon the issuance by the commissioner of a temporary coaching license. A temporary coaching license, valid for one year, will be issued under the following conditions:

(i) the superintendent of schools shall submit an application for a temporary coaching license, in which the inability of the district to obtain the services of a certified teacher with coaching qualifications and experience is demonstrated to the satisfaction of the commissioner;

(ii) candidates for initial temporary licensure shall have completed the first aid requirement set forth in section 135.5 of this Part prior to the first day of coaching;

(iii) candidates for the first renewal of a temporary license shall have completed or be enrolled in an approved course in philosophy, principles and organization of athletics;

(iv) candidates for any subsequent renewal of a temporary license shall have completed [or demonstrate evidence of satisfactory progress towards the completion of] an approved pre-service or in-service education program for coaches which shall include [an approved course in philosophy, principles and organization of athletics] approved courses in Health Sciences Applied to Coaching and Theory and Techniques of Coaching that is sport specific, within three years of appointment. Upon application in a format prescribed by the Commissioner of Education, set-

ting forth the reasons for which an extension is necessary, the period in which to complete such training may be extended to no more than seven years after such appointment. Such approved programs for coaches shall consist of one of the following (credits and hours vary depending upon the contact and endurance involved in the sport): a department-approved college program of from two to eight credits; or a department approved in-service education program, conducted by schools, colleges, professional organizations or other recognized groups or agencies, from 30 to 120 clock hours; or an equivalent experience which is approved by the Commissioner of Education; and

(v) coaches who have a lapse in service due to maternity leave, military leave, or other extenuating circumstances may apply in a format prescribed by the Commissioner for an additional extension to complete course work. Such application must set forth the reasons for which an extension is necessary. The period in which to complete such training shall be extended to no more than two additional years.

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(ii) Provisions for interschool athletic activities for pupils in grades 7 through 12. It shall be the duty of the trustees and boards of education to conduct interschool athletic competition for grades 7 through 12 in accordance with the following:

(a) . . .

(b) Interschool athletic competition for pupils in senior high school grades 9, 10, 11 and 12. Inter-high school athletic competition shall be limited to competition between high school teams, composed of pupils in grades 9 to 12 inclusive, except as otherwise provided in subclause (a)(4) of this subparagraph. Such activities shall be conducted in accordance with the following:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) of this subparagraph or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, or similar circumstances beyond the control of the student, such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must include documentation showing the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

(ii) . . .

(2) . . .

(3) . . .

(c) . . .

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

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

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

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

Section 101 of the Education Law continues the existence of the Education Department, with the Board of Regents as its head and authorizes the Board of Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

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

Subdivisions (1) and (2) of section 305 of the Education Law provide that the Commissioner of Education shall enforce all general and specific laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents and invests the Commissioner with general supervision over all schools and institutions subject to the provisions of the Education Law or any statute relating to education.

Subdivision (5) of section 803 of the Education Law specifically authorizes the Regents to adopt rules determining the subjects to be included in courses of physical education provided pupils in all elementary and secondary schools, the period of instruction in each of such courses, the qualifications of teachers, and the attendance upon such courses of instruction.

Subdivision (2) of section 3204 of the Education Law specifies the course of study for public schools, and includes instruction in physical training.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed amendment carries out the legislative objectives set forth in the aforementioned statutes by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school, establishing qualifications and appropriate training of coaches who may be appointed by boards of education for interschool athletic teams.

##### **3. NEEDS AND BENEFITS:**

The Office of the State Comptroller Audit on Physical Education recommended the change in regulation to accommodate districts with middle schools and the New York State Public High School Athletic Association and the New York State Athletic Administrators' Association have actively pursued a change in Commissioner's Regulation section 135.4(c)(7)(i)(c), relating to the educational requirements of coaches, the timelines to complete required course work and duration of competition for athletes.

The current regulations do not provide flexibility for school districts that have organized their 5th and 6th grades into a middle school. The proposed amendment would revise the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. This amendment would eliminate scheduling and staffing issues in middle level schools. The proposed change was listed in the recommendations of the Office of the State Comptroller Audit on Physical Education and recommended by administrators in middle level buildings.

Furthermore, the current regulations do not reflect equality of coaching requirements for certified teacher coaches and non-teacher coaches. In addition, new teachers are required to complete a Master's degree within five years of receiving their baccalaureate. This has affected the time available to new coaches to complete the required coaching courses and has affected the number of certified teacher coaches available to school districts for appointment as an interscholastic athletic coach. The proposed amendment would establish equal timelines for coaches to completing required course work, extend the time for completing requirements, and provide authority for additional extensions for individuals who have had a lapse in service due to extenuating circumstances and clarify extension of eligibility for interscholastic athletes. New York State Education Department oversight and control over the required instruction and coaching regulations would remain intact.

Additional changes in regulation on duration of competition are requested to clarify the extension of eligibility rule. The proposed amend-

ment provides that in order to be an acceptable cause for extending a student's eligibility for interscholastic athletics, the chief school officer must present sufficient evidence that includes documentation showing that the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

##### **4. COSTS:**

(a) Costs to State government: none

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

The proposed amendment does not impose any additional costs. The proposed amendment clarifies existing provisions in the regulation, including clarifying coursework requirements for coaches in paid or non-paid (volunteer) status and clarifying evidential requirements for extension of eligibility for interscholastic athletics. The proposed amendment also adds provisions permitting coaches to apply to the Commissioner for extensions to complete required coursework.

Furthermore, the proposed amendment provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. This will allow such districts to provide physical education in a cost-effective manner, consistent with a middle school organizational structure.

##### **5. LOCAL GOVERNMENT MANDATES:**

A school district must ensure that all students are provided the required instruction in physical education under section 803 of the Education Law. The proposed amendment provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school.

In addition, a school district that appoints an individual as an athletic coach for interschool athletic team must ensure that the individual possesses New York State Teacher Certification or Coaching Certification under section 803 of the Education Law, regardless of whether that individual is in a paid or non-paid (volunteer) status. The proposed amendment eliminates discrepancies between teacher-coaches and non-teacher coaches appointed by school districts.

A coach who has a lapse in service due to maternity leave, military leave or other extenuating circumstances may apply in a format prescribed by the Commissioner for an additional extension to complete course work, setting forth the reasons for which an extension is necessary.

In order to be an acceptable cause for extending a student's eligibility for interscholastic athletics, the chief school officer must present sufficient evidence that includes documentation showing that the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

##### **6. PAPERWORK:**

A coach who has a lapse in service due to maternity leave, military leave or other extenuating circumstances may apply in a format prescribed by the Commissioner for an additional extension to complete course work, setting forth the reasons for which an extension is necessary.

In order to be an acceptable cause for extending a student's eligibility for interscholastic athletics, the chief school officer must present sufficient evidence that includes documentation showing that the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

##### **7. DUPLICATION:**

The proposed amendment will not duplicate any other State or Federal statute or regulation.

##### **8. ALTERNATIVES:**

There were no significant alternatives. The proposed amendment would retain New York State Education Department oversight and control over the certification related to coaches in high schools, and would enable school districts to employ the most qualified candidates for coaching positions and clarify extension of athletic eligibility.

##### **9. FEDERAL STANDARDS:**

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

##### **10. COMPLIANCE SCHEDULE:**

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

#### **Regulatory Flexibility Analysis**

##### **Small Businesses:**

The proposed amendment revises the physical education instruction

requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school, eliminates discrepancies between teacher-coaches and non-teacher coaches appointed by school districts and clarifies extension of eligibility for interscholastic athletics, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Since it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 700 school districts, Charter Schools, and non-public schools in the State.

2. COMPLIANCE REQUIREMENTS:

A school district must ensure that all students are provided the required instruction in physical education under section 803 of the Education Law. The proposed amendment provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school.

In addition, a school district that appoints an individual as a coach for an interschool athletic team must ensure that the individual possesses New York State Teacher Certification or Coaching Certification under Article 803 of the Education Law, regardless of whether that individual is in a paid or non-paid (volunteer) status. The proposed amendment eliminates discrepancies between teacher-coaches and non-teacher coaches appointed by school districts. The proposed amendment also clarifies existing language, including clarifying extension of eligibility for interscholastic athletics, and adds provisions permitting coaches to apply to the Commissioner for extensions to complete required coursework.

A coach who has a lapse in service due to maternity leave, military leave or other extenuating circumstances may apply in a format prescribed by the Commissioner for an additional extension to complete course work, setting forth the reasons for which an extension is necessary.

In order to be an acceptable cause for extending a student's eligibility for interscholastic athletics, the chief school officer must present sufficient evidence that includes documentation showing that the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

3. PROFESSIONAL SERVICES:

A school district that appoints an individual as a coach for an interschool athletic team must ensure that the individual possesses New York State Teacher Certification or Coaching Certification under Article 803 of the Education Law, regardless of whether that individual is in a paid or non-paid (volunteer) status.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs. The proposed amendment clarifies existing provisions in the regulation, including clarifying coursework requirements for coaches in paid or non-paid (volunteer) status and clarifying evidential requirements for extension of eligibility for interscholastic athletics. The proposed amendment also adds provisions permitting coaches to apply in a format prescribed by the Commissioner for extensions to complete required coursework.

Furthermore, the proposed amendment provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. This will allow such districts to provide physical education in a cost-effective manner, consistent with a middle school organizational structure.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on school districts. Economic feasibility is addressed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The current regulations do not provide flexibility for school districts that have organized their 5th and 6th grades into a middle school. The proposed amendment would revise the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. This would eliminate scheduling and staffing issues in middle level schools.

In addition, current regulations do not reflect equal provisions for New York State Certification of certified coaches pursuant to Article 803 of the Education law, thereby causing confusion in obtaining such certification

and for schools to appoint qualified personnel. The proposed amendment would enable school districts to appoint the most qualified candidates for coaching positions. The proposed amendment also clarifies evidential requirements for extension of eligibility for interscholastic athletics and adds provisions permitting coaches to apply to the Commissioner for extensions to complete required coursework.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. Comments were also solicited from the New York State Public High School Athletic Association and the New York State Athletic Administrators Association.

*Rural Area Flexibility Analysis*

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including school districts in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

A school district must ensure that all students are provided the required instruction in physical education under section 803 of the Education Law. The proposed amendment provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school.

In addition, a school district that appoints an individual as a coach for an interschool athletic team must ensure that the individual possesses appropriate certification under Article 803 of the Education Law, regardless of whether that individual is in a paid or non-paid (volunteer) status. The proposed amendment eliminates discrepancies between teacher-coaches and non-teacher coaches appointed by school districts.

A coach who has a lapse in service due to maternity leave, military leave or other extenuating circumstances may apply in a format prescribed by the Commissioner for an additional extension to complete course work, setting forth the reasons for which an extension is necessary.

In order to be an acceptable cause for extending a student's eligibility for interscholastic athletics, the chief school officer must present sufficient evidence that includes documentation showing that the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs. The proposed amendment clarifies existing provisions in the regulation, including clarifying coursework requirements for coaches in paid or non-paid (volunteer) status and clarifying evidential requirements for extension of eligibility for interscholastic athletics. The proposed amendment also adds provisions permitting coaches to apply in a format prescribed by the Commissioner for extensions to complete required coursework.

Furthermore, the proposed amendment also provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. This will allow such districts to provide physical education in a cost-effective manner, consistent with a middle school organizational structure.

4. MINIMIZING ADVERSE IMPACT:

The current regulations do not provide flexibility for school districts that have organized their 5th and 6th grades into a middle school. The proposed amendment would revise the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. This would eliminate scheduling and staffing issues in middle level schools.

In addition, current regulations do not reflect equal provisions for New York State Certification of certified coaches pursuant to Article 803 of the Education Law, thereby causing confusion in obtaining such certification and for schools to appoint qualified personnel. The proposed amendment also clarifies evidential requirements for extension of eligibility for interscholastic athletics and adds provisions permitting coaches to apply to the Commissioner for extensions to complete required coursework.

Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to school districts' employment of coaches for interschool athletic teams, it is not feasible to impose a lesser standard on, or otherwise exempt, school districts and coaches in rural areas.

## 5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee and Nonpublic Schools Advisory Council, whose memberships include schools located in rural areas. Comments were also solicited from the New York State Public High School Athletic Association and the New York State Athletic Administrators Association.

**Job Impact Statement**

The proposed amendment relates to required physical education instruction for elementary grades, coaching certification and qualifications and duration of competition extension of athletic eligibility, and will not have a substantial adverse impact on job or employment opportunities. The proposed amendment revises the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school, and specifies the qualifications of those to be appointed (whether paid or unpaid) by school districts to fill existing athletic coaching positions or openings but does not adversely affect the number of such positions or openings. The proposed amendment also clarifies evidential requirements for extension of eligibility for interscholastic athletics and adds provisions permitting coaches to apply to the Commissioner for extensions to complete required coursework. Since it is evident from the subject matter of the proposed amendment that the amendment will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Fingerprinting and Criminal Background Check Requirements (CBCR) for Unescorted Access to Radioactive Materials

**I.D. No.** HLT-04-09-00002-E

**Filing No.** 156

**Filing Date:** 2009-02-17

**Effective Date:** 2009-02-17

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

**Action taken:** Addition of section 16.112 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 225(5)(p), (q) and 201(1)(r)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** We are proposing that these regulations be adopted on an emergency basis as authorized by Section 202(6) of the State Administrative Procedure Act because immediate adoption is necessary to protect the public health from the threat posed by this radioactive material security gap.

New York is the only state that has not implemented these requirements for radioactive material licensees. The US Nuclear Regulatory Commission issued these requirements in December 2007 with an implementation date of June 2008. NRC directed all state programs to implement the fingerprinting requirements by the June 2008 deadline as well. NRC and other states implemented the fingerprinting requirements in a short time frame via orders or license conditions. Because of the restrictions on fingerprinting in Section 201-a of NYS Labor Law, we were unable to implement these requirements as a license condition or as department orders, and could only impose these in regulation.

The fingerprinting requirements were discussed in February 2008 with Deputy Secretary Balboni, representatives of the Governor's office, Office of Homeland Security, Division of Criminal Justice Services and New York State Police and it was agreed that DOH should implement the fingerprinting requirements as soon as possible. Since we are the only program that has not yet implemented these security requirements we stand alone as not being fully protective of public health and safety. We need to implement these requirements as soon as possible to close that gap.

**Subject:** Fingerprinting and Criminal Background Check Requirements (CBCR) for Unescorted Access to Radioactive Materials.

**Purpose:** US NRC requirements-fingerprint and CBCRs for individuals allowed unescorted access to large quantities of radioactive materials.

**Text of emergency rule:** Pursuant to the authority vested in the Public Health Council by sections 225(5)(p) and 225(5)(q) of the Public Health Law and in the Commissioner of Health by section 201(1)(r) of the Public Health Law, Part 16 of the State Sanitary Code, contained in Chapter I of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 16.112, to be effective upon filing with the Department of State, to read as follows:

*Section 16.112 Fingerprinting and criminal background check requirements*

(a) *Applicability.*

*This section applies to any licensee who possesses, or is authorized to possess, radioactive material that is: (1) listed in Table 1 ("Radionuclides of Concern") of this Section and (2) in a quantity equal to or exceeding that listed in Table 1.*

(b) *Definitions*

(1) *Trustworthiness and Reliability (T&R) Official - means an individual appointed by the licensee who is responsible for determining the trustworthiness and reliability of another individual requiring unescorted access to one or more radioactive materials identified in Table 1 of this section.*

(2) *"Affected individual" means an individual who has or is seeking unescorted access to radioactive material identified in Table 1 of this section in a quantity equal to or exceeding that listed in Table 1.*

(3) *"Unescorted access" means access without an escort to radioactive material identified in Table 1 of this section which is in a quantity equal to or exceeding that listed in Table 1.*

(c) *Licensees shall, within ninety (90) days of the effective date of this section, establish and maintain a fingerprinting program that meets the requirements of this section for individuals who require unescorted access. Licensees shall implement this program in conformance with the following scheduled:*

(1) *Within sixty (60) days of the effective date of this section, the Licensee shall provide under oath or affirmation a certification that the Licensee's T & R Official is deemed trustworthy and reliable by the Licensee as required by subdivision (e) of this section.*

(2) *The Licensee shall, in writing, within thirty (30) days of the effective date of this section, notify the Department (1) if it is unable to comply with any of the requirements of this section, (2) if compliance with any of these requirements is unnecessary in its specific circumstances, or (3) if implementation of any of these requirements would cause the Licensee to be in violation of the provisions of any Department regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement. Such justification must explain the necessity for the relief and alternative actions to be taken. The Department may accept the justification if it determines that the action to be taken in lieu of compliance with the requirement is consistent with public health and is necessary to avoid undue financial hardship for the licensee.*

(3) *The Licensee shall complete implementation of the program established in accordance with subdivision (j) of this section within 90 days from the effective date of this section. In addition to the notifications in paragraphs 1 and 2 above, the Licensee shall notify the Department, in writing, within twenty-five (25) days after it has achieved full compliance with the requirements of this section. If within 60 days from the effective date of this section, the Licensee is unable to complete implementation of one or more requirements of this section, the Licensee shall submit a written request to the Department explaining the need for an extension of time to implement those requirements and providing a justification for the additional time for compliance that it seeks. The Department may grant such request if it determines that the requested extension of time will not jeopardize public health and is necessary to avoid undue financial hardship for the licensee.*

(4) *Licensees shall notify the Department and the United States Nuclear Regulatory Commission (NRC) Headquarters Operations Office by telephone within 24 hours if the results from a criminal history records check indicate an individual is listed on the Federal Bureau of Investigation (FBI) Terrorist Screening Data Base.*

(d) *Except as provided in subdivision (h) for individuals who are currently approved for unescorted access, the Licensee shall grant access to radioactive material in Table 1 in accordance with the requirements of its Increased Controls license conditions and the requirements of this Section.*

(e) *The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable by the Licensee in accordance with its Increased Controls license conditions before making a determination regarding the trustworthiness and reliability of another individual. If the T&R Official requires unescorted access, the Licensee must consider the results of the FBI identification and criminal history records check before approving a T&R Official.*

(f) *Prior to requesting fingerprints from any individual, the Licensee shall provide a copy of this section to that person.*

(g) Upon receipt of the results of FBI identification and criminal history records checks, the Licensee shall control such information as specified in subdivision (m) of this section and its Increased Controls license conditions.

(h) The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, within 90 days from the effective date of this section, based upon the results of the fingerprinting and FBI identification and criminal history records check. The Licensee may allow any individual who currently has unescorted access to certain radioactive material in accordance with its Increased Controls license conditions to continue to have unescorted access, pending a decision by the T&R Official as to whether that individual should continue to have such access. After 90 days from the effective date of this section, no individual may have unescorted access to any radioactive material listed in Table 1 of this section and in a quantity equal to or exceeding that listed in Table 1, without a determination by the T&R Official (based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination) that the individual may have unescorted access to such materials.

(i) Licensee responses to subdivisions (c)(1), (c)(2), (c)(3) and (c)(4) shall be submitted in writing to the Department. Licensee responses shall be marked as "Confidential - Security-Related Information".

(j) Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

(1) Each Licensee subject to the provisions of this section shall fingerprint each affected individual.

(2) For affected individuals employed by the licensee for three years or less, and for affected individuals who are nonlicensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, personal references, and fingerprinting and the review of an FBI identification and criminal history records check.

(3) The licensee shall also, obtain independent information to corroborate that provided by the employee (e.g. seeking references not supplied by the individual). For affected individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee and fingerprinting and an FBI identification and criminal history records check.

(4) Service provider licensee employees who are affected individuals shall be escorted unless they are determined to be trustworthy and reliable by a NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained by the licensee from the licensee providing the service.

(5) The licensee must submit one completed, legible standard FBI fingerprint card (Form FD-258, ORIMDNRC000Z)<sup>1</sup> for each affected individual, to the NRC's Division of Facilities and Security. The name and address of the individual (T&R Official) to whom the criminal history records should be returned must be included with the submission.

(6) The Licensee shall review and use the information received from the FBI identification and criminal history records check as part of its trustworthiness and reliability determination required by its Increased Controls license conditions.

(7) The Licensee shall notify each affected individual that his/her fingerprints will be used to secure a review of his/her criminal history record and inform the affected individual of the procedures for revising the record or including an explanation in the record, as specified in subdivision (l) "Right to Correct and Complete Information."

(8) Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is:

(i) An employee of the US Nuclear Regulatory Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history check;

(ii) A Member of Congress;

(iii) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history check;

(iv) The Governor or his or her designated State employee representative;

(v) Federal, State, or local law enforcement personnel;

(vi) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(vii) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC; or

(viii) documentation is provided which demonstrates that the employed individual has been favorably-decided by a U.S. Government

program involving fingerprinting and an FBI identification and criminal history records check within the last five calendar years of the effective date of this regulation, or documentation is provided which demonstrates that any person has an active security clearance (provided in the later two cases they make available the appropriate documentation). Written confirmation from the agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the employed individual no longer requires unescorted access associated with the Licensee's activities.

(9) All fingerprints obtained by the Licensee pursuant to this section must be submitted to the NRC.

(10) The Licensee shall review and use the information received from the FBI identification and criminal history records check and consider it as part of its trustworthiness and reliability determination, in conjunction with the trustworthiness and reliability requirements set forth in its Increased Controls license conditions, in making a determination whether to grant an affected individual unescorted access. The Licensee shall use any information obtained from a criminal history records check solely for the purpose of determining an affected individual's suitability for unescorted access.

(11) The Licensee shall document the basis for its determination whether to grant, or continue to allow, an affected individual unescorted access.

(k) Prohibitions

(1) A Licensee shall not base a final determination to deny an affected individual unescorted access solely on the basis of information received from the FBI involving:

(i) an arrest more than one (1) year old for which there is no information regarding the disposition of the case, or

(ii) an arrest that resulted in dismissal of the charge or an acquittal.

(2) A Licensee shall not use information received from a criminal history records check obtained pursuant to this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States or Article 1 of the New York State Constitution, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

(l) Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the affected individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an affected individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either a direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the FBI Identification Division<sup>2</sup>. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of a FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access determination based upon an individual's criminal history record only upon receipt of the FBI's confirmation or correction of the record. Upon a final adverse determination on unescorted access the Licensee shall provide the individual its documented basis for denial. Unescorted access shall not be granted to an individual during the review process.

(m) Protection of Information

(1) Each Licensee who obtains a criminal history record on an affected individual pursuant to this section shall establish and maintain a system of files and procedures for protecting the record and the personal information in the record from unauthorized disclosure.

(2) The Licensee may not disclose the record or personal information collected and maintained to persons other than the affected individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need-to-know.

(3) The personal information obtained on an affected individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the affected individual's written request to provide the information contained in his/her file, and the receiving Licensee verifies information such as the affected individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

(4) The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the Department to determine compliance with this section.

(5) The Licensee shall retain all fingerprint and criminal history records from the FBI, or a copy if the affected individual's file has been transferred, for three (3) years after termination of employment or determination of unescorted access (whether unescorted access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Table 1: Radionuclides of Concern

Radionuclide	Quantity of Concern <sup>1</sup> (TBq)	Quantity of Concern <sup>2</sup> (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90(Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above <sup>3</sup>	See Footnote Below <sup>4</sup>	

<sup>1</sup> The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

<sup>2</sup> The primary values used for compliance with this Order are tera becquerel (TBq).

<sup>3</sup> Radioactive materials are to be considered aggregated or co-located if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

<sup>4</sup> If several radionuclides are aggregated, the sum of the ratios of the activity of each source,  $i$  of radionuclide,  $n$ ,  $A_{i,n}$ , to the quantity of concern for radionuclide  $n$ ,  $Q_n$ , listed for that radionuclide equals or exceeds one. That is:

$$\sum_n \left\{ \sum_i \frac{A_{i,n}}{Q_n} \right\} \geq 1$$

<sup>1</sup> Copies of these forms may be obtained from NRC. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards. Licensees must have fingerprints taken by local law enforcement (or a private entity authorized to take fingerprints) because an authorized official must certify the identity of the person being fingerprinted. If the FBI advises the fingerprints are unclassifiable based on conditions other than poor quality, the Licensee must submit a request to NRC for alternatives. When those search results are received from the FBI, no further search is necessary. The NRC will receive and forward to the submitting Licensee all data from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record(s)

<sup>2</sup> In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the

challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency (see 28 CFR Part 16.30 through 16.34).

**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-04-09-00002-P, Issue of January 28, 2009. The emergency rule will expire April 17, 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: regsqna@health.state.ny.us

**Regulatory Impact Statement**

**Statutory Authority:**

The Public Health Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL Sections 225(5)(p) & (q) and 201(1)(r) authorize SSC regulation of the public health aspects of ionizing radiation. These provisions authorize the regulation of radioactive materials.

The Atomic Energy Act (see 42 USC §§ 2021(j)(1), 2021(o), and 2022) requires Agreement States such as New York to comply with and adopt federal standards or their authority to regulate certain radioactive material is jeopardized. The fingerprinting and criminal history records check requirements incorporated by these regulations are such federal standards.

**Legislative Objectives:**

The legislative objectives of PHL Sections 225(5) and 201(1)(p) and (q) are to protect public health and safety. These regulations enhance the security of radioactive material and are consistent with this purpose.

**Needs and Benefits:**

The possession and use of radioactive material is regulated by the US Nuclear Regulatory Commission (NRC). The NRC has relinquished that authority to states that have entered into agreements with NRC whereby the "Agreement State" takes over the authority for regulation of radioactive material. New York became the fourth Agreement State in 1962. Currently, 35 Agreement States exist.

DOH regulates the use of radioactive material at approximately 1100 facilities in order to protect people and the environment. DOH radioactive material licensees have the primary responsibility to maintain the security and accountability of the radioactive material in their possession. The events of 9/11 put new emphasis on security to prevent the malicious use of radioactive material, such as in dirty bombs. In 2002, the New York State Office of Public Security commissioned a study of radioactive material security in NYS. A task force comprised of state and federal radiation and security experts evaluated the current security posture. This evaluation included reviewing existing regulatory structure, policies and procedures and making site visits to several different types of facilities that possess and use radioactive materials. The task force developed several recommendations to improve radioactive material security. One of those recommendations was to explore using background investigations for assessing employees who have access to certain quantities of radioactive materials.

In 2005, the department implemented new security requirements called Increased Controls (ICs) on radioactive material licensees that possess certain quantities of radioactive materials. The NRC issued IC's on their licensees as well. The ICs included requirements for enhancing physical security of radioactive materials, coordination of security plans with local law enforcement and procedures for limiting unescorted access to radioactive materials to only those who have been determined to be trustworthy and reliable (T&R). The T&R determination is based on an evaluation of the individual's work history, employment records and personal references but does not include fingerprinting and FBI criminal background checks.

On August 8, 2005, section 652 of the US Energy Policy Act of 2005 (EPAct), was enacted. This provision amended the fingerprinting requirements of the Atomic Energy Act (AEA). Specifically, the EPAct amended Section 149 of the AEA (see 42 USC § 2169) to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission [NRC] that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, on December 2, 2007, NRC imposed fingerprinting and FBI identification and criminal history records check requirements on all NRC IC licensees with an effective date of June 2, 2008 (NRC Order EA-07-305). Also, NRC directed

the Agreement States to implement the fingerprinting requirements established in EA-07-305 on their licensees by the June 2, 2008 deadline. The DOH has determined that such requirements must be established in regulation. Since the DOH must establish these requirements in regulation, New York is the only state not to have implemented the fingerprinting requirements on its radioactive material licensees by the June 2, 2008 deadline. The NRC and all other Agreement States were able to impose the fingerprinting requirements immediately via department orders or license conditions.

**Costs:**

The cost impact of these regulations is a total of \$50 for each affected individual; \$36 for the Federal Bureau of Investigation identification and criminal history records check and \$10-15 fingerprint impressions by a law enforcement agency. The later cost varies with jurisdiction. This cost will apply to several New York State government entities including the Department of Health, Roswell Park Cancer Center, State Emergency Management Office, and several SUNY facilities.

**Local Government Mandates:**

No local governments, county, city, town, village, school district, fire department or any other district possess the type or quantity of radioactive materials that would subject them to fingerprinting requirements.

**Paperwork:**

Licensees will need to obtain fingerprint cards from the NRC. Also, licensees will need to maintain records of fingerprinting, criminal history and identification checks and trustworthiness and reliability determinations for review by the Department of Health.

**Duplication:**

There is no duplication of this requirement by any federal, state or local agency. New York State entered into an agreement with the federal government on October 15, 1962 by which the federal government discontinued its regulatory authority and New York assumed such authority.

**Alternatives:**

Taking no action was rejected as not consistent with NYS policies on public security. No other alternative exist for obtaining a FBI criminal background check.

**Federal Standards:**

These proposed fingerprinting and criminal background and identification checks are U.S. Nuclear Regulatory Commission's standards based on the Energy Policy Act of 2005.

**Compliance Schedule:**

The proposed rule will be effective upon filing with the Department of State. Affected licensees must begin to implement this immediately and it must be completed within 90 days after the effective date of the rule to implement the fingerprinting requirements. Licensees may submit a written request for more time to implement the fingerprinting requirements, in accordance with Section 16.112(c)(2). The DOH would review the request and make a determination.

**Regulatory Flexibility Analysis**

**Effect of rule:**

No local governments possess the quantity and type of radioactive material that would subject them to the proposed rule. There are 10 small businesses that will be affected by this regulation. Program staff have spoken with these facilities and 3 have already implemented the requirements since they have offices in other states and must comply with the NRC fingerprinting requirements in those states. All of these facilities were aware of the regulations and while some facilities had questions on implementation and timing, no one expressed opposition to the fingerprinting requirements.

**Compliance requirements:**

All affected facilities are required to establish policies and procedures for implementing the fingerprinting requirements, including designating a Trustworthy and Reliable (T&R) Official, obtaining fingerprint cards from NRC, having the fingerprints taken by local law enforcement, and submitting the cards to NRC. The T&R Official will receive and review the results of the criminal history records check and then make a determination on unescorted access for each affected individual. Also the T&R Official must notify DOH if any individual is identified on the FBI terror watchlist. Records of approvals for unescorted access must be maintained for inspection by the Department.

The proposed regulations do not impose significant new requirements since these facilities are already implementing procedures for determining the trustworthiness and reliability of these individuals. The proposed regulations will require that they take fingerprints and use the criminal history records check as part of their T&R determination.

**Professional services:**

Licensees will need the services of the FBI to perform the criminal history records check. Services of a law enforcement agency or other authorized party will be needed to verify identification and collect fingerprints.

**Compliance costs:**

The FBI criminal history records check cost is \$36 per individual, and the fee for taking fingerprinting is estimated to be \$10 - \$15 per individual. These are one-time costs per individual, not recurring or annual costs. Approximately 4-6 persons from each small business will be subject to fingerprinting. Indirect costs are estimated to be one-hour work time for fingerprinting for each individual.

**Economic and technological feasibility:**

There are no capital costs or new technology required to comply with the proposed rule.

**Minimizing adverse impact:**

The proposed rule establishes requirements for obtaining and using information on an individual's criminal history for allowing access to radioactive material. However the proposed rule does not set criteria for making this determination. It is up to the licensee to set the criteria and make a determination on each affected individual. Since affected licensees have already made a T&R determination using other criteria, we do not foresee significant adverse impacts. Further, since there are a limited number of affected facilities, the program intends to conduct workshops to assist licensees with any questions related to implementing the fingerprinting requirements.

**Participation:**

The Department issued a notice to all affected licensees in June 2007 informing them that the NRC was considering requirements requiring criminal history record checks as part of the T&R determination and that such requirements may be implemented in NYS. In October 2007, the Department initiated a series of statewide workshops on security of radioactive materials for IC licensees. At the three most recent workshops conducted in Long Island, Buffalo and Rochester the new fingerprinting requirements were discussed. In June 2008, another notice was sent to affected licensees informing them that the DOH is moving forward with developing regulations requiring fingerprinting and FBI criminal background checks. Further the NRC has developed a web page for commonly asked questions. Since the proposed rule is essentially the same as the NRC requirements (NRC Order EA-07-305), NYS facilities are encouraged to use the NRC web page.

**Rural Area Flexibility Analysis**

**Types and estimated numbers of rural areas:**

There are 55 facilities outside of NYC that are affected by this regulation. NYC Department of Health and Mental Hygiene will impose the same requirements on 24 facilities it regulates. The NYS DOH facilities are generally located in larger cities. A few licensees (industrial radiographers) are in commercially zoned facilities near metropolitan areas.

Reporting, recordkeeping and other compliance requirements and professional services:

Licensees will be required to obtain, process and mail fingerprint cards to the Nuclear Regulatory Commission (NRC). Licensees will maintain records of fingerprinting activities including determinations of trustworthiness and reliability for review by the Department. Licensees must notify the department if any individual is identified on the FBI terror watchlist. The need for professional services will be limited to use of the applicable local law enforcement for fingerprint impressions.

**Costs:**

The cost estimate for regulated parties is approximately \$50 for each applicable individual. This includes \$36 for the NRC to process the FBI identification and criminal history records check and approximately \$10-15 for taking fingerprint impressions by a law enforcement agency. The later varies with jurisdiction.

**Minimizing adverse impact:**

There are no alternatives with respect to rural areas. All affected licensees will need to use the services of an approved entity to take fingerprints.

**Rural area participation:**

The Department issued a notice to all affected licensees in June 2007 informing them that the NRC was considering requirements requiring criminal history record checks as part of the T&R determination and that such requirements may be implemented in NYS. In October 2007, the Department initiated a series of statewide workshops on security of radioactive materials for IC licensees. At the three most recent workshops conducted in Long Island, Buffalo and Rochester the new fingerprinting requirements were discussed. In June 2008, another notice was sent to affected licensees informing them that the DOH was moving forward with developing regulations requiring fingerprinting and FBI criminal background checks. Further the NRC has developed a web page for commonly asked questions. Since the proposed rule is essentially the same as the NRC requirements (NRC Order EA-07-305), NYS facilities are encouraged to use the NRC web page.

**Job Impact Statement**

**Nature of impact:**

It is anticipated that few, if any, persons will be adversely affected. The fingerprinting and criminal background check is an additional element or enhancement to the existing trustworthy and reliability (T & R) determination requirement. DOH inspections of these facilities during 2007 indicated that all persons were deemed to be trustworthy and reliable. No person was adversely affected by that evaluation. A history of criminal activity is not automatically disqualifying. The Trustworthiness and Reliability Official (TRO) will review an individual's record of criminal activity and determine if that individual will be granted unescorted access to the applicable radioactive materials. If the determination indicates that an individual should not have unescorted access to radioactive materials, the person may be permitted to have escorted access. However, a situation where the licensee has no means to provide an escort, or has limited availability of an escort (e.g., shift work), could result in an affected individual not being able to perform tasks and duties that require access to applicable radioactive sources. In such situations the licensee may need to reassign the individual to tasks that do not require unescorted access, or reschedule tasks based on an escort's schedule.

#### Categories and numbers affected:

DOH inspections indicate that approximately 500 persons will be subject to fingerprinting, including physicians and medical staff, researchers/scientists, laboratory workers, and industrial radiographers.

#### Regions of adverse impact:

No region will be disproportionately affected. The affected facilities are larger hospitals, universities, blood banks, research institutions and industrial radiographers. The affected parties are not rural entities.

#### Minimizing adverse impact:

The intent of a fingerprint check is to provide additional information on an employee's personal history. The licensee's TRO will make a determination of an employee's trustworthiness and reliability based on various factors (employment history, education, etc.) and the results of the criminal activity report. A history of criminal activity is not automatically disqualifying. The licensee, not the DOH, will establish disqualifying criteria.

Not all individuals who use these sources will require a criminal background check. If the radioactive material is used in the presence of more than one individual only one of those individuals must be determined to be trustworthy and reliable and may escort other individuals. During inspections of the affected licensees, DOH inspectors determine if the applicable radioactive sources are generally used in the presence of several persons. The use of radiation therapy units in hospitals involves a team of individuals including physicians, medical therapy physicists, nurses, and radiation therapy technologists. Use of industrial radiography sources is subject to two-person rule, meaning that two qualified individuals must be present. Blood banks/services are typically operated continuously (24/7) with several persons present.

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## Office of Mental Health

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

#### Operation of Residential Programs for Adults

I.D. No. OMH-09-09-00002-P

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

**Proposed Action:** Amendment of Part 595 of Title 14 NYCRR.

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

**Subject:** Operation of Residential Programs for Adults.

**Purpose:** To amend Part 595 to include a new class of community residences for treatment of eating disorders.

**Substance of proposed rule (Full text is posted at the following State website: [www.omh.state.ny.us](http://www.omh.state.ny.us)):** Summary

This rule will amend 14 NYCRR Part 595, Operation of Residential Programs for Adults, by establishing a new sub-class of community residence for individuals over the age of 18 who have been diagnosed as having an eating disorder such as anorexia nervosa, bulimia, binge eating disorder, or other eating disorder identified as such in generally accepted medical or mental health diagnostic references.

#### Overview

The new category of community residences will be known as Community Residences for Eating Disorder Integrated Treatment (CREDIT),

and will address the needs of adults who have been referred by a provider who is a participant in a Comprehensive Care Center for Eating Disorders (CCCED) designated by the State Department of Health or by the individual's primary care physician or mental health provider, and whose individual treatment issues preclude being served in a family setting or other less restrictive residential alternative.

#### Requirements

CREDIT programs will be required to have written affiliation agreements with CCCED providers, which must include referral and admission procedures, as well as procedures for crisis clinical back-up. The agreements will be subject to approval by the Office of Mental Health, and will be required to assure continuity and integration of care with the CCCED. The agreements will provide, at a minimum, for the following:

- The performance of a psychiatric assessment;
- The development of an integrated service plan;
- The performance of a medical examination;
- The supervision of meal, bathroom and exercise time;
- Family participation, as appropriate.

CREDIT programs will be required to have sufficient staff to meet the special needs of individuals residing in a community residence who have been diagnosed with an eating disorder. Services will be required to be provided pursuant to an initial service plan developed by program staff with the resident and family and/or any collateral identified for participation within three days of admission, and a more extensive plan to be developed within four weeks of admission. The CREDIT program will be required to complete progress notes weekly.

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

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

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

#### Regulatory Impact Statement

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

Subdivision (a) of Section 31.04 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the power to adopt regulations setting standards of quality and adequacy of facilities and establishing procedures for the issuance, amendment and renewal of operating certificates.

Chapter 676 of the Laws of 2007, as amended by Chapter 24 of the Laws of 2008, creates Section 31.25 of the Mental Hygiene Law, which requires the Commissioner of the Office of Mental Health to establish, pursuant to regulation, licensed residential providers of treatment and/or supportive services to individuals with eating disorders.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Section 2799-e of the Public Health Law establishes Comprehensive Care Centers for Eating Disorders, and requires that they include within their scope of services a licensed residential component.

3. Needs and Benefits: These amendments establish Community Residences for Eating Disorder Integrated Treatment (CREDIT programs). The development of CREDIT programs by the Office of Mental Health was required by Chapter 676 of the Laws of 2007, as amended by Chapter 24 of the Laws of 2008, and codified in Section 31.25 of the Mental Hygiene Law. The CREDIT program will serve the needs of those individuals over the age of 18, who have been referred by a provider who is a participant in a Comprehensive Care Center for Eating Disorders (CCCED) designated by the State Department of Health or by the individual's primary care physician, or mental health provider, and whose individual treatment issues preclude being served in a family setting or other less restrictive residential alternative.

#### 4. Costs:

(a) Cost to regulated persons: There will be no costs to providers as a result of this regulatory amendment.

(b) Cost to State and local government: None expected. It is anticipated that the costs of operating each licensed program will be paid for by private insurance.

5. Paperwork: The paperwork that would be required as a result of this rulemaking would be consistent with the required paperwork of any new community residence.

6. Local Government Mandates: This regulatory amendment will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may affect this rule.

8. Alternative Approaches: The only alternative to this regulatory amendment would be inaction. The development of these providers is mandated by Section 31.25 of the Mental Hygiene Law. A failure to promulgate these regulations would be contrary to the legislation. Therefore, that alternative was necessarily rejected. It should be noted that in the development of these regulations, OMH staff met with providers of eating disorder treatment and representatives of the insurance industry, and their input was instrumental in crafting the regulatory amendments.

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

10. Compliance Schedule: The regulatory amendment would be effective immediately upon adoption.

#### **Regulatory Flexibility Analysis**

The proposed rule will serve to develop Community Residences for Eating Disorder Integrated Treatment (CREDIT) programs. Because it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas. Recipients of mental health services in rural and non-rural programs may benefit from the establishment of Community Residences for Eating Disorder Integrated Treatment (CREDIT) programs.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this notice because the proposed rule, which serves to establish Community Residences for Eating Disorder Integrated Treatment programs (CREDIT), will not have any adverse impact on jobs and employment opportunities. In fact, the creation of this new type of community residence should have a positive influence on employment opportunities.

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

#### **Medical Assistance Payments for Community Rehabilitation Services Within Residential Programs for Adults, Children & Adolescents**

**I.D. No.** OMH-09-09-00003-P

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

**Proposed Action:** Amendment of Part 593 of Title 14 NYCRR.

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

**Subject:** Medical Assistance Payments for Community Rehabilitation Services within Residential Programs for Adults, Children & Adolescents.

**Purpose:** To clarify that services provided by CREDIT programs do not qualify as rehabilitative and are not eligible for Medicaid payments.

**Text of proposed rule:** Section 593.3 of Title 14 NYCRR is amended by adding a new subdivision (g) to read as follows:

*(g) This Part does not apply to the operation of a community residence for eating disorder integrated treatment (CREDIT) program.*

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

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

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

#### **Regulatory Impact Statement**

1. Statutory Authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.02 of the Mental Hygiene Law grants the Commissioner the authority to request operators of facilities licensed by the Office of Mental Health to submit financial, statistical and program information as the Commissioner may deem to be necessary.

Chapter 676 of the Laws of 2007, as amended by Chapter 24 of the Laws of 2008, creates Section 31.25 of the Mental Hygiene Law, which

requires the Commissioner of the Office of Mental Health to establish, pursuant to regulation, licensed residential providers of treatment and/or supportive services to individuals with eating disorders.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Section 2799-e of the Public Health Law establishes Comprehensive Care Centers for Eating Disorders, and requires that they include within their scope of services a licensed residential component.

3. Needs and Benefits: This regulation clarifies that services that are provided by Community Residences for Eating Disorder Integrated Treatment (CREDIT) programs do not qualify as rehabilitative services under this Part, and are, therefore, not eligible for Medical Assistance (Medicaid) payments. Residential rehabilitative services are intended for individuals who have severe deficits in various life skills, and who require an intermediate to long-term period of residential care. The CREDIT program is designed for individuals who do require residential care, and who do have impairment in life skills, but not typically to the extent and duration anticipated in the design of the rehabilitative services program. Further, the CREDIT program is a new model of service. In a time of extremely limited resources, the commitment of scarce Medicaid dollars to this model is premature. Individuals with eating disorders who receive Medicaid continue to be eligible to receive the full panoply of services available under the Medicaid State Plan to address their needs.

4. Costs: No additional costs are anticipated as a result of the adoption of this regulation.

5. Paperwork: This rule should not substantially increase the paperwork requirements of those affected.

6. Local Government Mandates: This regulatory amendment will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may affect this rule.

8. Alternative Approaches: The only alternative would be to include services provided in the CREDIT program as rehabilitative services for which Medicaid reimbursement is available. This alternative is not being pursued for two major reasons. First, residential rehabilitative services are intended for individuals who have severe deficits in various life skills, and who require an intermediate to long-term period of residential care. The CREDIT program is designed for individuals who do require residential care, and who do have impairment in life skills, but not typically to the extent and duration anticipated in the design of the rehabilitative services program. Second, the CREDIT program is a new model of service. In a time of extremely limited resources, the commitment of scarce Medicaid dollars to this model is premature. Therefore, this alternative was necessarily rejected.

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

10. Compliance Schedule: The regulatory amendment would be effective immediately upon adoption.

#### **Regulatory Flexibility Analysis**

Because it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas. The amendment merely clarifies that services provided by Community Residences for Eating Disorder Integrated Treatment (CREDIT) programs do not qualify as rehabilitative services under Part 593 and are, therefore, not eligible for Medical Assistance (Medicaid) payments.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this notice because the proposed rule will not have any adverse impact on jobs and employment opportunities. This amendment simply clarifies that services provided by Community Residences for Eating Disorder Integrated Treatment (CREDIT) programs do not qualify as rehabilitative services under this Part and are, therefore, not eligible for Medical Assistance (Medicaid) payments.

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

#### **Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional Disturbances**

**I.D. No.** OMH-09-09-00004-P

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

**Proposed Action:** Amendment of Part 594 of Title 14 NYCRR.

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

**Subject:** Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional Disturbances.

**Purpose:** To amend Part 594 to include a new class of community residences for treatment of eating disorders.

**Substance of proposed rule (Full text is posted at the following State website: [www.omh.state.ny.us](http://www.omh.state.ny.us)):** Summary

This rule will amend 14 NYCRR Part 594, Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional Disturbances, by establishing a new sub-class of community residence for children and adolescents who have been diagnosed as having an eating disorder such as anorexia nervosa, bulimia, binge eating disorder, or other eating disorder identified as such in generally accepted medical or mental health diagnostic references.

#### Overview

The new category of community residences will be known as Community Residences for Eating Disorder Integrated Treatment (CREDIT), and will address the needs of individuals who have reached at least the 12th birthday but not the 19th, who have been referred by a provider who is a participant in a Comprehensive Care Center for Eating Disorders (CCCED) designated by the State Department of Health or by the individual's primary care physician or mental health provider, and whose individual treatment issues preclude being served in a family setting or other less restrictive residential alternative.

#### Requirements

CREDIT programs will be required to have written affiliation agreements with CCCED providers, which must include referral and admission procedures, as well as procedures for crisis clinical back-up. The agreements will be subject to approval by the Office of Mental Health, and will be required to assure continuity and integration of care with the CCCED. The agreements will provide, at a minimum, for the following:

- The performance of a psychiatric assessment;
- The development of an integrated service plan;
- The performance of a medical examination;
- The supervision of meal, bathroom and exercise time;
- Family participation, as appropriate;
- Coordination of residents' educational needs with residents' school districts.

CREDIT programs will be required to have sufficient staff to meet the special needs of children and adolescents residing in a community residence who have been diagnosed with an eating disorder. Services will be required to be provided pursuant to an initial service plan developed by program staff with the resident and family and/or any collateral identified for participation within three days of admission, and a more extensive plan to be developed within four weeks of admission. The service plan will be required to be reviewed weekly. The CREDIT program will be required to complete progress notes weekly.

Revisions Regarding Children's Residences other than CREDIT Program

Part 594 is also being amended to include several technical amendments concerning the operation of licensed housing programs for children and adolescents. Included in these amendments is utilization of "person first" language and an emphasis on family-centered community-based treatment, resilience and recovery. In addition, each licensed housing program will be required to submit a staffing plan which includes at least one full-time employee who is a registered nurse for each eight-bed community residence and for each 12-bed teaching family home.

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

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

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

#### Regulatory Impact Statement

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

Subdivision (a) of Section 31.04 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the power to adopt regulations setting standards of quality and adequacy of facilities and establishing procedures for the issuance, amendment and renewal of operating certificates.

Chapter 676 of the Laws of 2007, as amended by Chapter 24 of the

Laws of 2008, creates Section 31.25 of the Mental Hygiene Law, which requires the Commissioner of the Office of Mental Health to establish, pursuant to regulation, licensed residential providers of treatment and/or supportive services to individuals with eating disorders.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Section 2799-e of the Public Health Law establishes Comprehensive Care Centers for Eating Disorders, and requires that they include within their scope of services a licensed residential component.

3. Needs and Benefits: These amendments establish the CREDIT program (Community Residences for Eating Disorder Integrated Treatment). The development of licensed residential services for persons with eating disorders by the Office of Mental Health was required by Chapter 676 of the Laws of 2007, as amended by Chapter 24 of the Laws of 2008, and codified in Section 31.25 of the Mental Hygiene Law. The CREDIT program will serve the needs of those individuals who have attained at least the 12th birthday but not the 19th, who have been referred by a provider who is a participant in a Comprehensive Care Center for Eating Disorders (CCCED) designated by the State Department of Health or by the individual's primary care physician, and whose individual treatment issues preclude being served in a family setting or other less restrictive residential alternative.

#### 4. Costs:

(a) Cost to regulated persons: There will be no costs to providers as a result of this regulatory amendment.

(b) Cost to State and local government: None expected. It is anticipated that the costs of operating each licensed program will be paid for by private insurance.

5. Paperwork: The paperwork that would be required as a result of this rulemaking would be consistent with the required paperwork of any new community residence.

6. Local Government Mandates: This regulatory amendment will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may affect this rule.

8. Alternative Approaches: The only alternative to this regulatory amendment would be inaction. The development of these providers is mandated by Section 31.25 of the Mental Hygiene Law. A failure to promulgate these regulations would be contrary to the legislation. Therefore, that alternative was necessarily rejected. It should be noted that in the development of these regulations, OMH staff met with providers of eating disorder treatment and representatives of the insurance industry, and their input was instrumental in crafting the regulatory amendments.

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

10. Compliance Schedule: The regulatory amendment would be effective immediately upon adoption.

#### Regulatory Flexibility Analysis

The proposed rule will serve to develop Community Residences for Eating Disorder Integrated Treatment (CREDIT). Because it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

#### Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas. Recipients of mental health services in rural and non-rural programs may benefit from the Community Residences for Eating Disorder Integrated Treatment (CREDIT) program.

#### Job Impact Statement

A Job Impact Statement is not submitted with this notice because the proposed rule, which serves to establish the CREDIT program (Community Residences for Eating Disorder Integrated Treatment) will not have any adverse impact on jobs and employment opportunities. In fact, the creation of this new type of community residence should have a positive influence on employment opportunities.

## Office of Mental Retardation and Developmental Disabilities

### EMERGENCY RULE MAKING

#### Amendment of Liability for Services Regulations

**I.D. No.** MRD-09-09-00012-E

**Filing No.** 154

**Filing Date:** 2009-02-13

**Effective Date:** 2009-02-15

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

**Action taken:** Amendment of Subpart 635-12 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07 and 13.09(b)

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

**Specific reasons underlying the finding of necessity:** The reason justifying the emergency adoption of these amendments to Subpart 635-12 is the preservation of the health, safety and general welfare of persons in New York State who are receiving, or wish to receive certain developmental disabilities services provided under the auspices of OMRDD. The emergency amendments delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services. If OMRDD did not temporarily suspend full implementation of Subpart 635-12, effective February 15, 2009, for the services specified in the emergency amendments, some individuals in need of these services might be unable to access these services or be otherwise adversely affected.

**Subject:** Amendment of Liability for Services Regulations.

**Purpose:** To delay implementation of provisions of Subpart 635-12 for certain services.

**Text of emergency rule:** Subdivision 635-12.1(e) is amended as follows:

(3) Services which an individual was receiving on a regular basis as of February 15, 2009, and receives from a different provider after February 15, 2009, where the individual's receipt of the Services from the different provider is the result of one provider assuming operation or control of the other provider's operations and programs, or is the result of a merger or consolidation of providers [; and].

[(4) HCBS Waiver Respite Services which converted after February 15, 2009 from respite services funded as a type of family support services if:

- (i) the individual received the Respite Services funded as a type of family support services on a regular basis as of February 15, 2009; and
- (ii) the HCBS Waiver Respite Services are delivered by the same provider.]

Subdivision 635-12.1(g) is amended as follows:

(g) "Services" means ICF/DD Services (Intermediate Care Facilities for Persons with Developmental Disabilities, see Part 681); *the following HCBS Waiver Residential Habilitation Services: community (in a community residence), IRA, and family care; and HCBS Waiver Day Habilitation Services.* [, Medicaid Service Coordination, Day Treatment Services, and the following HCBS Waiver Services: Residential Habilitation Services (community (in a community residence), IRA, family care, and at home), Day Habilitation Services, Prevocational Services, Supported Employment Services, and Respite Services. Blended and Comprehensive Services which are a combination of the Services listed above are also considered "Services."]

Paragraph 635-12.3(b)(1) is amended as follows:

(1) Prior to the individual receiving Services, the provider shall take [all] *such* steps to obtain personal and financial information as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

Subparagraph 635-12.3(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

Paragraph 635-12.4(b)(1) is amended as follows:

(1) Prior to March 15, 2009 the provider shall take [all] *such* steps to obtain personal and financial information concerning individuals without Full Medicaid Coverage as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

Subparagraph 635-12.4(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

Paragraph 635-12.8(a)(5) is deleted as follows:

[(5) Medicaid Service Coordination (MSC). OMRDD may, subject to the availability of state funds, pay a provider for up to 3 months of MSC if:

- (i) the individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage;
- (ii) the individual is not paying for MSC and no one else is paying for MSC; and
- (iii) the provider is meeting its obligations under this Subpart.]

Subdivisions 635-12.9(e) and (f) are deleted as follows:

[(e) For At Home Residential Habilitation Services, the fee shall equal the Medicaid fee OMRDD established for the At Home Residential Habilitation Services for the dates the Services were provided.]

[(f) For Day Treatment Services, the fee shall equal the Medicaid fee OMRDD established for the day treatment facility for the dates the Services were provided.]

Note: Subdivisions (g) and (h) are renumbered as (e) and (f).

Subdivisions 635-12.9(i) through (m) are deleted as follows:

[(i) For Medicaid Service Coordination, the fee shall equal the payment level applicable to the individual's situation as stated in the Medicaid Service Coordination Vendor Contract between the provider and OMRDD in effect on the dates the Services were provided.]

[(j) For Prevocational Services, the fee shall equal the Medicaid price OMRDD established for the Prevocational Services on the dates the services were provided.]

[(k) For Supported Employment Services, the fee shall equal the Medicaid fee OMRDD established for the Supported Employment Services for the dates the Services were provided.]

[(l) For Respite Services, the fee shall equal the Medicaid price OMRDD established for the Respite Services for the dates the Services were provided.]

[(m) For Blended or Comprehensive Services, the fee shall equal the price OMRDD established for the Blended or Comprehensive Services for the dates the Services were provided.]

**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 May 13, 2009.

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

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

#### Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility for seeing that persons with mental retardation and developmental disabilities are provided with services, as stated in the New York State Mental Hygiene Law Section 13.07.

b. 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).

2. Legislative Objectives: These emergency regulations further the legislative objectives embodied in Section 13.07 and 13.09(b) of the Mental Hygiene Law by amending newly promulgated Subpart 635-12 (Liability for Services) by the deletion of specific services. OMRDD determined that individuals in need of those services might have been unable to access the services or might have been otherwise adversely impacted if Subpart 635-12 had become effective without the amendments in this emergency regulation.

3. Needs and Benefits: OMRDD recently filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in OMRDD's Home and Community Based Services (HCBS) Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the proposed regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not currently have Medicaid and the extent of the efforts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specifies that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

In response to the concerns raised, OMRDD is promulgating these emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services. OMRDD intends to promulgate future regulations, effective June 15, 2009, to add these services.

The emergency regulation also clarifies that the provider's duty to gather information concerning liable parties and the ability to pay and qualify for Medicaid is limited to what is reasonably necessary to gather this information, not everything that is possible to gather the information. OMRDD made this clarification in response to provider concerns.

#### 4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD will not incur any new costs as a result of these amendments. OMRDD had originally estimated that full implementation of the Subpart 635-12 regulations would result in a saving to the State of approximately \$17.5 million as services currently funded with 100 percent State monies become funded with 50 percent participation of federal funds and some individuals or liable parties pay the fees established. While the emergency adoption of these amendments may subtract from the full amount of these savings, a reliable estimate of the shortfall is very difficult to quantify. OMRDD is strongly encouraging providers to maintain and even step up efforts to help individuals obtain Medicaid and enroll in the HCBS waiver for the services during the interval that implementation has been delayed. Although Subpart 635-12 will not apply to these services because of these emergency amendments, the State will experience much of the same savings through the compliance of individuals and providers with this request.

There will be no additional costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs to individuals and providers associated with implementation and continued compliance with the amendments.

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

6. Paperwork: There will be no paperwork required as a result of the emergency amendments. The emergency amendments will instead decrease paperwork, since providers will not have to give the required notices to individuals and liable parties for the specified services.

7. Duplication: The emergency amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited services for persons with developmental disabilities.

8. Alternatives: OMRDD had considered delaying the application of Subpart 635-12 for only "preexisting services" (services delivered as of February 15, 2009) of the service types addressed. However, in response to concerns raised concerning "new" services started after February 15, particularly regarding the supported employment transition from VESID to OMRDD services and intermittent respite services, OMRDD decided to delay the application for these services as well as "preexisting services" in the same categories, in order to more fully evaluate the concerns raised with regard to these issues.

9. Federal Standards: The proposed regulations do not exceed any applicable federal standards.

10. Compliance Schedule: No specific compliance activities are necessary to implement the emergency regulations. On the contrary, the emergency regulations defer the compliance activities necessary to implement Subpart 635-12 for the specified services.

In order to inform providers about the change, OMRDD notified providers in the OMRDD system of its intention to delete the specified services on January 30, 2009, and also announced its intention during a provider association meeting in January. At the time of the promulgation of this emergency regulation, providers should already be aware of its provisions.

#### Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide developmental disabilities services under the auspices of OMRDD. While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. As of December, 2008, OMRDD estimates that there are approximately 274 provider agencies that would be affected by the emergency amendments.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that adoption of these emergency amendments is necessary for the health, safety and general welfare and that they will have a positive effect on the regulated parties, including small business providers of services, associated with the specific developmental disabilities services for which implementation of Subpart 635-12 is being delayed by these emergency amendments. The emergency amendments will have no effect on local governments.

OMRDD recently filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in the HCBS Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not previously subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not currently have Medicaid and the extent of the efforts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specifies that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

2. Compliance requirements: The emergency amendments suspend the

compliance requirements of Subpart 635-12 for certain developmental disabilities services. In response to the concerns raised, OMRDD is promulgating these emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services. OMRDD intends to promulgate future regulations, effective June 15, 2009, to add these services.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There will be no compliance costs for regulated parties or local governments as a result of the emergency amendments.

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

6. Minimizing adverse economic impact: The amendments will not result in any adverse economic impacts for small businesses, local governments and other regulated parties.

7. Small business and local government participation: OMRDD conducted extensive outreach to providers related to the proposed regulations adding the new Subpart 635-12. OMRDD facilitated discussions of the proposed regulations in numerous meetings including the provider associations, the Benefit Development Workgroup which includes regulated parties, and a subcommittee of the Commissioner's Advisory Council. OMRDD also informed all providers of the proposed regulations. The emergency rule responds to concerns raised during these discussions and in written comments addressing the proposed rule making during the comment period for the proposed Subpart 635-12.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis for this rule making is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. As discussed in the Regulatory Impact Statement, these emergency amendments temporarily delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services.

#### **Job Impact Statement**

A Job Impact Statement for this rule making is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. The emergency amendments temporarily delay implementation of Subpart 635-12 for certain developmental disabilities services.

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## Department of Motor Vehicles

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

#### **Protective Helmets, Goggles, Face Shields and Wind Screens for Motorcycles**

**I.D. No.** MTV-09-09-00014-P

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

**Proposed Action:** This is a consensus rule making to amend Part 54 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 381(6)

**Subject:** Protective helmets, goggles, face shields and wind screens for motorcycles.

**Purpose:** To delete a reference to an obsolete standard for motorcycle operator protective equipment.

**Text of proposed rule:** Subdivision (b) of section 54.2 is amended to read as follows:

(b) Goggles or face shield. An eye protection device as defined in [Regulation VESC-8.] *American National Standard Institute's Z87.1 as most recently amended.*

Subdivisions (g), (j), (k), (l) and (m) of section 54.2 are REPEALED.

Sections 54.3 through 54.6 are REPEALED and a new section 54.3 is added to read as follows:

*54.3 Requirements. It shall be unlawful for any person to operate or ride upon a motorcycle unless he or she wears a protective helmet of the type, which meets the requirements set forth in Federal Motor Vehicle Safety Standards of 49 Code of Federal Regulations standard 571.218 "Motorcycle Helmets".*

Section 54.11 is amended to read as follows:

54.11 Eye protection. [(a)] A motorcyclist may use any eye protection device that has been manufactured in conformity with the *American National Standard Institute's Z87.1 standard "Occupational and Educational Personnel Eye and Face Protection Devices"* [Regulation VESC-8]. A motorcyclist may not operate a motorcycle unless he or she is wearing such eye protection.

[(b)] Regulation VESC-8 refers to the eighth regulation of the Vehicle Equipment Safety Commission. Such regulation may be obtained by writing to Vehicle Equipment Safety Commission, Suite 802, 4660 Kenmore Avenue, Alexandria, Virginia 22304.]

Section 54.21 is amended to read as follows:

54.21 Requirements for approval. No wind screen shall be [approved] used unless: (a) The visual material meets the requirements set forth in *Federal Motor Vehicle Safety Standards of 49 Code of Federal Regulation standard 571.205 "Glazing Materials"* [provisions appearing in USA Standard Specifications for Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways Z26.1 - 1966 for Motorcycle Use. For rigid plastic material, item 4 of table 1 shall be used; for flexible plastics, item 6 of table 1 shall be used].

[(b)] The metal support shall be of a material which shall bend rather than fragment under impact.

(c) Covering material, other than visual material, shall be beaded at the edges to prevent fraying; and if cloth, shall be tested for flammability according to the procedures of Federal Specifications CCC-T-191b, 5902.

(d) It meets the identification requirements of section 54.22.]

Section 54.22 is REPEALED.

Section 54.31 is REPEALED.

Subdivision (a) of section 54.32 is amended to read as follows:

(a) A manufacturer desiring to secure approval of [a] protective [helmet,] goggles[,] or face [shield] shields [, or wind screen,] shall submit to the Commissioner of Motor Vehicles, Albany, New York, postage prepaid, a test report certified as required by this Part [, together with a sample of the device for which approval is sought, identified as required by this Part].

Subdivision (b) of section 54.32 is REPEALED.

Subdivision (c) is relettered subdivision (b) and is amended to read as follows:

[(c) In lieu of approval under subdivision (a) of this section, approval] (b) Approval shall be deemed to be granted upon the receipt by the Commissioner of Motor Vehicles of a certificate of equipment approval issued by the *Automotive Manufacturers Equipment Compliance Agency, Inc. (AMECA), 1101 - 15th Street, N. W., Suite 607 Washington, DC 20005-5020* to the Commissioner of Motor Vehicles, Bureau of Technical Assessment, Empire State Plaza, Albany, N.Y. 12228

A new subdivision (c) is added to section 54.32 to read as follows:

(c) *The provisions of the American National Standard Institute Z87.1 which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled: American National Standard, Occupational and Educational Personal Eye and Face Protection Devices, ANSI Z87.1-2003, revised as of August 2003, published by the American Society of Safety Engineers. The provisions of the Code of Federal Regulations, title 49, Parts 571.205 and 571.218, revised as of October 1, 2003, published by the U.S. Government Printing Office via GPO Access, have also been incorporated by reference and have been filed with the Secretary of State of New York. The standard and regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Ave, Albany, NY 12231, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Motor Vehicles, Office of Counsel, 6 Empire State Plaza, Albany, NY 12228. The standard may be purchased from the American Society of Safety Engineers, 1800 East Oakton Street, Des Plaines, IL 60018-2187. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Heidi A. Bazicki, Counsel's Office, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Sean J. Martin, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

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

**Consensus Rule Making Determination**

The proposed regulation amends 15 NYCRR Part 54 to reference "American National Standard Institute (ANSI) standard Z87.1" as the standard to be used by the Commissioner in approving goggles or face shields required for motorcycle operators. The current regulation references VESC (Vehicle Equipment Safety Commission) Standard 8 as the required standard, but since that agency was disbanded several years ago, the standard is obsolete.

The proposed amendment also reflects the fact that the current reference to New York's adoption of Federal Specifications CCC-T-191b for glazing materials on motorcycle windscreens has been superceded by the Federal standard for motorcycle windscreens codified at 49 CFR 571.205. The regulation also incorporates by reference the federal standard for motorcycle helmets.

This is a consensus rule because Vehicle and Traffic Law, Section 381(6), requires the Commissioner to adopt the federal standard for motorcycle helmets. In addition, this regulation reflects the most current federal and industry standards for goggles and motorcycle windscreens.

**Job Impact Statement**

A Job Impact Statement is not submitted with this rulemaking because it will not have any impact on job creation or development in New York State.

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## Public Service Commission

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

**Stay of Commission Order Issued November 21, 2008****I.D. No.** PSC-09-09-00008-EP**Filing Date:** 2009-02-12**Effective Date:** 2009-02-12

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

**Proposed Action:** On February 12, 2009, the PSC adopted an order staying the petition of North Town Roosevelt, LLC, to submeter electricity at 510-580 Main Street, Roosevelt Island, New York, located in the territory of Consolidated Edison Company of New York Inc.

**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, as described in the attachment, be detrimental to the health, safety and general welfare of tenants who are low income, are elderly and/or are disabled.

**Subject:** Stay of Commission Order issued November 21, 2008.

**Purpose:** To stay operation of the Commission's November 21, 2008.

**Substance of emergency/proposed rule:** The Commission, on February 12, 2009, adopted an order staying the petition of North Town Roosevelt, LLC, to submeter electricity at 510-580 Main Street, Roosevelt Island, New York, located in the territory of Consolidated Edison Company of New York Inc., subject to the terms and conditions set forth in the order.

**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 May 12, 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

**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**

A regulatory impact statement is 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.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is 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.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is 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.

**Job Impact Statement**

A job impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-E-0838SA2)

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

**Stay of Commission Order Issued November 21, 2008****I.D. No.** PSC-09-09-00009-EP**Filing Date:** 2009-02-12**Effective Date:** 2009-02-12

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

**Proposed Action:** On February 12, 2009, the PSC adopted an order staying the petition of Frawley Plaza, LLC, to submeter electricity at 1295 Fifth Avenue, 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York Inc.

**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, as described in the attachment, be detrimental to the health, safety and general welfare of tenants who are low income, are elderly and/or are disabled.

**Subject:** Stay of Commission Order issued November 21, 2008.

**Purpose:** To stay operation of the Commission's November 21, 2008.

**Substance of emergency/proposed rule:** The Commission, on February 12, 2009, adopted an order staying the petition of Frawley Plaza, LLC, to submeter electricity at 1295 Fifth Avenue, 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York Inc., subject to the terms and conditions set forth in the order.

**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 May 12, 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

**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**

A regulatory impact statement is 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.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is 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.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is 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.

**Job Impact Statement**

A job impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-E-0836SA2)

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

**Stay of Commission Order Issued November 21, 2008**

**I.D. No.** PSC-09-09-00010-EP

**Filing Date:** 2009-02-12

**Effective Date:** 2009-02-12

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

**Proposed Action:** On February 12, 2009, the PSC adopted an order staying the petition of Metro North Owners, LLC, to submeter electricity at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, located in the territory of Consolidated Edison Company of New York Inc.

**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, as described in the attachment, be detrimental to the health, safety and general welfare of tenants who are low income, are elderly and/or are disabled.

**Subject:** Stay of Commission Order issued November 21, 2008.

**Purpose:** To stay operation of the Commission's November 21, 2008.

**Substance of emergency/proposed rule:** The Commission, on February 12, 2009, adopted an order staying the petition of Metro North Owners, LLC, to submeter electricity at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, located in the territory of Consolidated Edison Company of New York Inc., subject to the terms and conditions set forth in the order.

**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 May 12, 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is 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.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is 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.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is 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.

**Job Impact Statement**

A job impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-E-0837SA2)

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

**Stay of Commission Order Issued November 21, 2008**

**I.D. No.** PSC-09-09-00011-EP

**Filing Date:** 2009-02-12

**Effective Date:** 2009-02-12

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

**Proposed Action:** On February 12, 2009, the PSC adopted an order staying the petition of KNW Apartments, LLC, to submeter electricity at 1890 Lexington Avenue and 1900 Lexington Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York Inc.

**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, as described in the attachment, be detrimental to the health, safety and general welfare of tenants who are low income, are elderly and/or are disabled.

**Subject:** Stay of Commission Order issued November 21, 2008.

**Purpose:** To stay operation of the Commission's November 21, 2008.

**Substance of emergency/proposed rule:** The Commission, on February 12, 2009, adopted an order staying the petition of KNW Apartments, LLC, to submeter electricity at 1890 Lexington Avenue and 1900 Lexington Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York Inc., subject to the terms and conditions set forth in the order.

**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 May 12, 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is 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.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is 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.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is 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.

**Job Impact Statement**

A job impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-E-0839SA2)

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

**Installed Reserve Margin of 16.5% for the NY Control Area for the Capability Year Beginning 5/1/09 Through 4/30/10**

**I.D. No.** PSC-09-09-00015-EP

**Filing Date:** 2009-02-17

**Effective Date:** 2009-02-17

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

**Proposed Action:** On February 12, 2009, the PSC approved an order adopting an Installed Reserve Margin of 16.5% for the New York Control Area for the Capability Year beginning May 1, 2009 and ending April 30, 2010.

**Statutory authority:** Public Service Law, sections 4, 5, 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:** This action is taken on an emergency basis pursuant to SAPA § 202(6). The adequacy and reliability of the supply of electricity is essential to the public health, safety and general welfare of the citizens of New York. The IRM must be in place prior to the March 30, 2009 ICAP auction in order to provide market participants adequate notice to inform their bidding and to enable the NYISO to conduct the ICAP auction without disruption. A failure to timely adopt the IRM could potentially impair the availability of bidders and adversely affect the adequacy of capacity supply and the reasonableness of capacity prices. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the immediate adoption of an IRM is necessary for the preservation of the public health, safety and general welfare.

**Subject:** Installed Reserve margin of 16.5% for the NY Control Area for the Capability Year beginning 5/1/09 through 4/30/10.

**Purpose:** To adopt and Installed Reserve margin of 16.5% for the NY Control Area for the Capability Year beginning 5/1/09 to 4/30/10.

**Substance of emergency/proposed rule:** The Commission, on February 12, 2009, approved an order adopting an Installed Reserve Margin of 16.5% for the New York Control Area for the Capability Year beginning May 1, 2009 and ending April 30, 2010, subject to the terms and conditions set forth in the order.

**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 May 17, 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is 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.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is 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.

**Job Impact Statement**

A job impact statement is 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-0088SA3)

**NOTICE OF ADOPTION**

**Standards Relating to Electric and Gas Metering Equipment**

**I.D. No.** PSC-43-07-00023-A

**Filing Date:** 2009-02-13

**Effective Date:** 2009-02-13

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

**Action taken:** On 2/12/09, the PSC adopted an order for deployment of minimum functional requirements for advanced metering infrastructure systems.

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

**Subject:** Standards relating to electric and gas metering equipment.

**Purpose:** To approve standards relating to electric and gas metering equipment used in the course of providing utility service in NYS.

**Substance of final rule:** The Public Service Commission adopted an order regarding minimal functional requirements for Advanced Metering Infrastructure Systems and initiated an inquiry into benefit-cost methodologies, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(02-M-0514SA10)

**NOTICE OF ADOPTION**

**Water Rates and Charges**

**I.D. No.** PSC-26-08-00020-A

**Filing Date:** 2009-02-12

**Effective Date:** 2009-02-12

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

**Action taken:** On February 12, 2009, the PSC approved a request filed by JD Water Company to make a change in the rates and charges contained in its tariff schedule P.S.C. No. 1—Water, to become effective to February 18, 2009.

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

**Subject:** Water rates and charges.

**Purpose:** To approve an increase in tariff based rates to provide additional annual revenues of \$24,328 or 21.7%.

**Substance of final rule:** The Commission adopted an order approving the request of JD Water Company, Inc., to increase its tariff based rates to provide additional annual revenues of \$24,328 or 21.7%, effective February 18, 2009, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(08-W-0654SA1)

## NOTICE OF ADOPTION

## Utility Financial Incentives for Energy Efficiency Programs

I.D. No. PSC-42-08-00013-A

Filing Date: 2009-02-13

Effective Date: 2009-02-13

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

**Action taken:** On 2/12/09, the PSC adopted in part and denied in part a petition for rehearing by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., for utility financial incentives for energy efficiency programs.

**Statutory authority:** Public Service Law, sections 5(2) and 66(2)

**Subject:** Utility financial incentives for energy efficiency programs.

**Purpose:** To approve in part and deny in part utility financial incentives for energy efficiency programs.

**Substance of final rule:** The Commission, on February 12, 2009, adopted in part and denied in part a petition for rehearing brought by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., of the Commission's order concerning utility financial incentives, issued August 22, 2008, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-M-0548SA12)

## NOTICE OF ADOPTION

## Mandatory Day-Ahead Hourly Pricing

I.D. No. PSC-44-08-00014-A

Filing Date: 2009-02-12

Effective Date: 2009-02-12

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

**Action taken:** On February 12, 2009, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s implementation plan to expand Mandatory Day-Ahead Hourly Pricing in compliance with the Commission's order issued July 23, 2008.

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

**Subject:** Mandatory Day-Ahead Hourly Pricing.

**Purpose:** To approve the implementation plan to expand Mandatory Day-Ahead Hourly Pricing.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order approving Orange and Rockland Utilities, Inc.'s implementation plan to expand Mandatory Day-Ahead Hourly Pricing in compliance with the Commission's order issued July 23, 2008, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-0949SA2)

## NOTICE OF ADOPTION

## Amendments to NYS Standardized Interconnection Requirements

I.D. No. PSC-47-08-00003-A

Filing Date: 2009-02-13

Effective Date: 2009-02-13

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

**Action taken:** On February 12, 2009, the PSC adopted an order modifying the New York State Standardized Interconnection Requirements and Application Process for New Distributed Generators 2 MW or Less Connected in Parallel with Utility Distribution Systems.

**Statutory authority:** Public Service Law, section 66

**Subject:** Amendments to NYS Standardized Interconnection Requirements.

**Purpose:** To approve amendments to NYS Standardized Interconnection Requirements for distributed generators 2 MW or less.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order modifying the New York State Standardized Interconnection Requirements and Application Process for New Distributed Generators 2 MW or Less Connected in Parallel with Utility Distribution Systems, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-E-1018SA1)

## NOTICE OF ADOPTION

## Amendment to Net Energy Metering to Customer-Generators

I.D. No. PSC-48-08-00010-A

Filing Date: 2009-02-13

Effective Date: 2009-02-13

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

**Action taken:** On February 12, 2009, the PSC adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's tariff amendment PSC 15 – Electricity, effective February 27, 2009, to amend PSL Section 66-j.

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

**Subject:** Amendment to Net Energy Metering to customer-generators.

**Purpose:** To approve changes to its net metering program to comply with changes in PSL Section 66-j.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's tariff amendment PSC 15 – Electricity, effective February 27, 2009, to effectuate amendments to PSL § 66-j Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating System, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(08-E-1305SA1)

**NOTICE OF ADOPTION****Amendment to Net Energy Metering to Customer-Generators****I.D. No.** PSC-48-08-00011-A**Filing Date:** 2009-02-13**Effective Date:** 2009-02-13

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

**Action taken:** On February 12, 2009, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s tariff amendment PSC 9—Electricity, effective February 27, 2009, to amend PSL Sections 66-j and 66-l.

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

**Subject:** Amendment to Net Energy Metering to customer-generators.

**Purpose:** To approve changes to its net metering program to comply with changes in PSL Sections 66-j and 66-l.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s tariff amendment PSC 9—Electricity, effective February 27, 2009, to effectuate amendments to PSL § 66-j Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating System and § 66-l Net Metering for Residential Farm Service and Non-Residential Wind Electric Generating Systems, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(08-E-1306SA1)

**NOTICE OF ADOPTION****Amendment to Net Energy Metering to Customer-Generators****I.D. No.** PSC-48-08-00012-A**Filing Date:** 2009-02-13**Effective Date:** 2009-02-13

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

**Action taken:** On February 12, 2009, the PSC adopted an order approving, with modifications, Orange and Rockland Utilities Inc.'s tariff amendment PSC 2—Electricity, effective February 27, 2009, to amend PSL Sections 66-j and 66-l.

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

**Subject:** Amendment to Net Energy Metering to customer-generators.

**Purpose:** To approve changes to its net metering program to comply with changes in PSL Sections 66-j and 66-l.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order approving, with modifications, Orange and Rockland Utilities, Inc.'s tariff amendment PSC 2 – Electricity, effective February 27, 2009, to effectuate amendments to PSL § 66-j Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating System and § 66-l Net Metering for Residential Farm Service and Non-Residential Wind Electric Generating Systems, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(08-E-1307SA1)

**NOTICE OF ADOPTION****Amendment to Net Energy Metering to Customer-Generators****I.D. No.** PSC-48-08-00013-A**Filing Date:** 2009-02-13**Effective Date:** 2009-02-13

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

**Action taken:** On February 12, 2009, the PSC adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's tariff amendment PSC 207—Electricity, effective February 27, 2009, to amend PSL Section 66-j.

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

**Subject:** Amendment to Net Energy Metering to customer-generators.

**Purpose:** To approve changes to its net metering program to comply with changes in PSL Section 66-j.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's tariff amendment PSC 207 – Electricity, effective February 27, 2009, to effectuate amendments to PSL § 66-j Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating System, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(08-E-1308SA1)

**NOTICE OF ADOPTION****Amendment to Net Energy Metering to Customer-Generators****I.D. No.** PSC-48-08-00014-A**Filing Date:** 2009-02-13**Effective Date:** 2009-02-13

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

**Action taken:** On February 12, 2009, the PSC adopted an order approving, with modifications, Rochester Gas and Electric Corporation's tariff amendment PSC 19—Electricity, effective February 27, 2009, to amend PSL Section 66-j.

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

**Subject:** Amendment to Net Energy Metering to customer-generators.

**Purpose:** To approve changes to its net metering program to comply with changes in PSL Section 66-j.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order approving, with modifications, Rochester Gas and Electric Corporation's tariff amendment PSC 19 – Electricity, effective February 27, 2009, to effectuate amendments to PSL § 66-j Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating System, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents

per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-E-1309SA1)

**NOTICE OF ADOPTION**

**Amendment to Net Energy Metering to Customer-Generators**

**I.D. No.** PSC-48-08-00015-A  
**Filing Date:** 2009-02-13  
**Effective Date:** 2009-02-13

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

**Action taken:** On February 12, 2009, the PSC adopted an order approving, with modifications, New York State Electric & Gas Corporation’s tariff amendment PSC 120—Electricity, effective February 27, 2009, to amend PSL Section 66-j.

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

**Subject:** Amendment to Net Energy Metering to customer-generators.

**Purpose:** To approve changes to its net metering program to comply with changes in PSL Section 66-j.

**Substance of final rule:** The Commission, on February 12, 2009, adopted an order approving, with modifications, New York State Electric & Gas Corporation’s tariff amendment PSC 120 – Electricity, effective February 27, 2009, to effectuate amendments to PSL § 66-j Net Energy Metering for Residential Solar, Farm Waste or Non-Residential Solar Electric Generating System, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-E-1310SA1)

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

**Whether to Grant, Deny, or Modify, in Whole or in Part, the Petition for Rehearing**

**I.D. No.** PSC-09-09-00016-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition for rehearing seeking rescission of the Commission’s order granting permission to submeter electricity at Schomburg Plaza.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Purpose:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition for rehearing on behalf of the tenants of 1295 Fifth Avenue, 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York (Schomburg Plaza) seeking rescission of the Commission’s order issued November 24, 2008 allowing the submetering of electricity Schomburg Plaza.

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

New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-E-0836SA3)

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

**Whether to Grant, Deny, or Modify, in Whole or in Part, the Petition for Rehearing**

**I.D. No.** PSC-09-09-00017-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition for rehearing seeking rescission of the Commission’s order granting permission to submeter electricity at Roosevelt Landings (formerly Eastwood).

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Purpose:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition for rehearing on behalf of tenants of 510-580 Main Street, Roosevelt, New York (Roosevelt Landings) seeking rescission of the Commission’s order issued November 21, 2008 allowing the submetering of electricity at Roosevelt Landings.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-E-0838SA3)

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

**Whether to Grant, Deny, or Modify, in Whole or in Part, the Petition for Rehearing**

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

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition for rehearing seeking rescission of the Commission’s order granting permission to submeter electricity at KNW Apartments.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Purpose:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition for rehearing on behalf of tenants of 1890 Lexington Avenue and 1900 Lexington Avenue, New York, New York (KNW Apartments) seeking rescission of the Commission's order issued November 21, 2008 allowing the submetering of electricity at KNW Apartments.

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

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

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

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

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

(08-E-0839SA3)

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

**Continuation of Exemptions from Standby Rates for Beneficial Forms of Distributed Generation**

**I.D. No.** PSC-09-09-00019-P

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

**Proposed Action:** The Public Service Commission is considering the continuation of exemptions from standby rates for beneficial forms of distributed generation that are scheduled to expire on May 31, 2009.

**Statutory authority:** Public Service Law, sections 64, 65(1), (2), (3), (5), 66(1), (2), (5), (8), (9), (10) and (12)

**Subject:** Continuation of exemptions from standby rates for beneficial forms of distributed generation.

**Purpose:** Consideration of continuation of exemptions from standby rates for beneficial forms of distributed generation.

**Substance of proposed rule:** The Public Service Commission is considering the continuation of exemptions from standby rates for beneficial forms of distributed generation, including small, efficient combined heat and power projects, as detailed in an Order Instituting Proceeding and Notice Soliciting Comments issued in Case 09-E-0109. The exemptions are scheduled to expire on May 31, 2009, and include the options to select standard tariff rates or a phase-in to standby rates instead of the otherwise-applicable standby rates themselves. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(09-E-0109SA1)

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

**Waiver of 16 NYCRR 86.3(a)(1) and (2), 86.3(b)(2), 86.6(b) and (c), and 88.4(a)**

**I.D. No.** PSC-09-09-00020-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 waiver of certain provisions of 16 NYCRR regarding Upstate New York Power Corporation's application pursuant to PSL Article VII for a Certificate of Environmental Compatibility and Public Need.

**Statutory authority:** Public Service Law, art. VII

**Subject:** Waiver of 16 NYCRR 86.3(a)(1) and (2), 86.3(b)(2), 86.6(b) and (c), and 88.4(a).

**Purpose:** Waiver of 16 NYCRR 86.3(a)(1) and (2), 86.3(b)(2), 86.6(b) and (c), and 88.4(a).

**Substance of proposed rule:** In a motion accompanying an application filed January 13, 2009 (Case No. 09-T-0049), Upstate NY Power Corp. (UNYPC) seeks a waiver of certain application requirements. UNYPC seeks a Certificate of Environmental Compatibility and Public Need, pursuant to Public Service Law (PSL) Article 7, authorizing the construction and operation of an electric transmission facility between Galloo Island in the Town of Hounsfield, Jefferson County, New York, to the Fitzpatrick-Edic Substation in the Town of Mexico, Oswego County, New York. In its PSL Article 7, UNYPC specifically requests waiver of the following otherwise applicable provisions of 16 NYCRR:

(1) Section 86.3(a)(1) and 86.3(a)(2), NYSDOT Maps for Submarine Portion of Transmission Line;

(2) Section 86.3(a)(2), NYSDOT Maps at 1:250,000 Scale

(3) Section 86.3(a)(2)(iv), Nearby, Crossing or Connecting Rights-of-Way or Facilities of Other Utilities on NYSDOT Maps at 1:250,000 Scale;

(4) Section 86.3(b)(2), Aerial Photographs;

(5) Section 86.6(b) and (c), Design Drawings.

(6) Section 88.4(a)(4), Permission to file System Reliability Impact Study (SRIS) as forwarded by the New York Independent System Operator's Transmission Planning Advisory Subcommittee (TPAS) for approval by the Operating Committee.

**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-T-0049SA1)

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

**Water Rates and Charges**

**I.D. No.** PSC-09-09-00021-P

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

**Proposed Action:** Edgewood Lakes, Inc. filed tariff revisions, to become effective May 1, 2009, to increase its annual operating revenues by \$11,051 or 103.35% and increase its Escrow Account's surcharge from \$40 to \$100.

**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 increase Edgewood Lakes, Inc.'s annual revenues by \$11,051 and increase the surcharge of its Escrow Account.

**Substance of proposed rule:** On February 12, 2009, Edgewood Lakes, Inc. (Edgewood or the company) electronically filed Leaf No. 12, Revision 3 to P.S.C. No. 4—Water, to become effective on May 1, 2009. The company filed new rates to produce additional annual revenues of \$11,051 or approximately 103.35%. Edgewood also filed Escrow Account Statement No. 4 requesting that the quarterly escrow surcharge be increased from \$40 to \$100 so that it can make system improvements mandated by the Sullivan County Department of Health. The company provides flat rate water service to 17 residential customers in the Town of Rockland, Sullivan County.

The company's tariff is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under Access to Commission Documents - Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

**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](mailto: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](mailto: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-0121SA1)

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

**Whether to Grant, Deny, or Modify, in Whole or in Part, the Petition for Rehearing**

**I.D. No.** PSC-09-09-00022-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition for rehearing seeking rescission of the Commission's order granting permission to submeter electricity at Metro North Apartments.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Purpose:** Whether to grant, deny, or modify, in whole or in part, the petition for rehearing.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition for rehearing on behalf of tenants of Metro North Apartments complex, located at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York (Metro North Apartments) seeking rescission of the Commission's order issued November 21, 2008 allowing the submetering of electricity at Metro North Apartments.

**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](mailto: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](mailto:jaclyn_brillling@dps.state.ny.us)

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

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

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

(08-E-0837SA3)

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

**Interconnection of the Networks between WVT and Verizon Wireless for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-09-09-00023-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Warwick Valley Telephone Company (WVT) for approval of an Interconnection Agreement with Verizon Wireless executed on December 15, 2008.

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

**Subject:** Interconnection of the networks between WVT and Verizon Wireless for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between WVT and Verizon Wireless.

**Substance of proposed rule:** Warwick Valley Telephone Company and Verizon Wireless have reached a negotiated agreement whereby Warwick Valley Telephone Company and Verizon Wireless will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their network lasting until December 15, 2010, or as extended.

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

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

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

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

(09-C-0105SA1)

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**Office of Real Property  
Services**

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**NOTICE OF ADOPTION**

**Certification and Training Rules for Certain New York City (NYC) Assessors**

**I.D. No.** RPS-45-08-00019-A

**Filing No.** 153

**Filing Date:** 2009-02-13

**Effective Date:** 2009-03-04

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

**Action taken:** Amendment of Subpart 188-8 of Title 9 NYCRR.

**Statutory authority:** Real Property Tax Law, art. 3, title 3 and section 202(1)(1)

**Subject:** Certification and training rules for certain New York City (NYC) assessors.

**Purpose:** To implement the provisions of Chapter 252 of the Laws of 2007.

**Text or summary was published** in the November 5, 2008 issue of the Register, I.D. No. RPS-45-08-00019-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Philip J. Hawver, Esq., Office of Real Property Services, 16 Sheridan Avenue Albany, New York 12210-2714, (518) 474-8821, email: internet.legal@orps.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## Office of Temporary and Disability Assistance

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

#### Recovery of Overpayments

**I.D. No.** TDA-09-09-00007-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 352.31(d)(1) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 106-b

**Subject:** Recovery of overpayments.

**Purpose:** To delete the regulatory requirement to recoup/recover overpayments from all members of an assistance unit regardless of their ages at the time of overpayment.

**Text of proposed rule:** Amend paragraph (1) of subdivision (d) of section 352.31 to read as follows:

(1)(i) Social services districts [shall] *must* recover an overpayment from:

[(i)](a) the assistance unit [which] *that* was overpaid;

[(ii)](b) any assistance unit of which [a] *an adult* member of the overpaid assistance unit, *as defined in subparagraph (ii) of this paragraph*, has subsequently become a member; [or] *and*

[(iii)](c) any adult individual [members] *member* of the overpaid assistance unit, *as defined in subparagraph (ii) of this paragraph*, whether or not currently a recipient.

(ii) *The term "adult", as used in this paragraph, refers to any member of the assistance unit who at the time of overpayment occurrence exceeds the age requirements of an eligible child as set forth in section 369.2 (c) of this Title. A child meeting the eligible child age requirements who is a member of the assistance unit at the time of overpayment occurrence must not be held liable for overpayment recoupment/recovery by operation of clauses (b) or (c) of subparagraph (i) of this paragraph.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

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

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

#### Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services

concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 106-b of the SSL requires OTDA to promulgate regulations to implement procedures for correcting overpayments and underpayments of public assistance made to assistance units. Pursuant to this section, the procedures for correcting overpayments must be designed to minimize adverse impact on the recipients and to the extent possible avoid undue hardships. The Temporary Assistance Source Book defines "assistance unit" as an individual, or a number of individuals, for whom assistance is provided.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that adequate provision is made for those persons unable to provide for themselves so that, whenever possible, such persons can be restored to a condition of self-support and self-care.

3. Needs and benefits:

This change would delete the regulatory requirement to recoup/recover overpayments from all members of an assistance unit regardless of their ages at the time of overpayment. With this proposed change, when a member of the overpaid unit is added to someone else's assistance unit, establishes his or her own assistance unit, or is an adult no longer in receipt of assistance, a previous overpayment would only be recouped/recovered if the person had been an adult member of the previously overpaid assistance unit. Therefore, a child meeting the eligible child age requirements who was a member of the overpaid assistance unit could not be held liable for an overpayment on that assistance unit when he or she is added to someone else's assistance unit, later establishes his or her own assistance unit, or becomes an adult and is no longer in receipt of assistance.

Under the existing regulations, a child on someone else's assistance unit (for example, a mother's assistance unit) could have an overpayment from that assistance unit follow him or her and have it recouped when he or she becomes a child or adult member of another person's assistance unit, later establishes his or her own assistance unit as an adult, or becomes an adult, even if he or she is no longer in receipt of assistance. However, this proposal would prevent such recoupments/recoveries from occurring.

These proposed changes would benefit children by relieving them of the burden of an overpayment incurred on someone else's assistance unit when they were children in that assistance unit.

4. Costs:

These proposed changes may slightly reduce the dollar amounts collected as recoupments of public assistance overpayments, since districts will no longer be able to collect overpayments from children receiving public assistance or from adults who received public assistance overpayments as children. However, OTDA anticipates that the fiscal impact of these proposed amendments will be minimal. Anecdotal evidence suggests that districts generally attempt to recover from adults in overpaid assistance units in the first instance, since it is less difficult to recover from adults than from children.

It is noted that OTDA cannot calculate a specific cost attributable to these proposed amendments because there is no existing data that distinguishes between recoupments obtained from overpaid adults verses recoupments obtained from children or from adults who received public assistance overpayments as children. Consequently, OTDA is relying upon the anecdotal evidence.

There would be a minimal administrative savings attributable to the proposed changes. These proposed amendments would simplify the recoupment process for districts by eliminating the necessity of attempting to track and recoup public assistance from children who currently receive or who have received benefits.

There would be no new costs for equipment or supplies. The districts already have the office equipment necessary to comply with the proposed changes.

There would be minimal costs associated with training district staff to comply with the proposed changes. OTDA would issue an administrative directive (ADM) to coincide with the filing of the proposed rule. The ADM would advise the districts of the changes. Since these proposed amendments would simplify the current tracking process, extensive training is not necessary.

5. Local government mandates:

These amendments would not impose any additional programs, services, duties or responsibilities upon the districts. Districts are now required to establish and track overpayments for adult and child members of an assistance unit that is overpaid. In this respect, the proposed rule would simplify the current tracking process by narrowing the group of individuals from whom overpayments can be recovered.

## 6. Paperwork:

There would be no additional forms required to support this process.

## 7. Duplication:

These proposed amendments would not duplicate, overlap or conflict with any existing State or federal regulations.

## 8. Alternatives:

The alternative is to leave section 351.31(d)(1) intact and continue to allow districts to recoup/recover overpayments from persons who were children on someone else's assistance unit when an overpayment was incurred. However, leaving this regulation intact could create hardships for other assistance units that the child may become a member of, or perhaps the child's own assistance unit once the child reaches adulthood.

## 9. Federal standards:

The proposed amendments would not conflict with federal standards for public assistance.

## 10. Compliance schedule:

Districts would still recover from the assistance unit that was overpaid, but they would be informed to limit recoupment/recovery of overpayments to persons who were adult members of the overpaid assistance unit if that member later establishes his/her own assistance unit, becomes a member of another assistance unit or is no longer receiving assistance. OTDA would issue an administrative directive (ADM) to coincide with the filing of the proposed change. Districts would be advised that these changes will be effective 60 days from the filing date of the regulatory amendments.

**Regulatory Flexibility Analysis**

## 1. Effect of rule:

The proposed amendments would have an impact on local governments, specifically social services districts. However, there would be no impact on small businesses.

## 2. Compliance requirements:

The districts would still hold all active public assistance units accountable for overpayments which occur to the unit. However, they would limit recoupment/recovery of overpayments which occur to an assistance unit to adult unit members when a member of the overpaid assistance unit later establishes his/her own unit, becomes a member of another assistance unit or is no longer in receipt of assistance. OTDA would issue an administrative directive (ADM) to coincide with the filing of the proposed changes. Districts would be advised that these changes will be effective 60 days from the filing date of the regulatory amendments.

## 3. Professional services:

The proposed amendments would not require districts to hire additional professional services. Instead the proposed changes would simplify the current tracking process.

## 4. Compliance costs:

The proposed changes may slightly reduce the dollar amounts collected by districts as recoupments of public assistance overpayments, since districts will no longer be able to collect overpayments from children receiving public assistance or from adults who received public assistance overpayments as children. However, OTDA anticipates that the fiscal impact of these proposed amendments will be minimal. Anecdotal evidence suggests that districts generally attempt to recover from adults in overpaid assistance units in the first instance, since it is less difficult to recover from adults than from children.

The districts would experience a minimal administrative savings attributable to the proposed changes. These proposed amendments would simplify the recoupment process for districts by eliminating the necessity of attempting to track and recoup public assistance from children who currently receive or who have received benefits. Consequently, districts could use the additional staff time to accomplish other tasks.

There would be no new costs for equipment or supplies. The districts already have the office equipment necessary to comply with the proposed changes.

There would be minimal costs associated with training district staff to comply with the proposed changes. OTDA would issue an administrative directive (ADM) to coincide with the filing of the proposed rule. The ADM would advise the districts of the changes. Since these proposed amendments would simplify the current tracking process, extensive training of district staff is not necessary.

## 5. Economic and technological feasibility:

All districts would have the economic and technological ability to comply with these proposed amendments.

## 6. Minimizing adverse impact:

These proposed changes may slightly reduce the dollar amounts collected by districts as recoupments of public assistance overpayments. However, the districts would benefit from the proposed simplification of the current tracking process and the additional staff time that could be directed toward other district priorities.

## 7. Small business and local government participation:

On December 7, 2007, a day long Breaking the Cycle of Dependency

workgroup meeting was held at the offices of the New York State Office of Children and Family Services located at 52 Washington Street, Rensselaer, New York. The social services districts that attended the workgroup meeting were: Chautauqua, Niagara, Madison, Nassau, Schenectady, Tompkins, Rockland and the New York City Human Resources Administration. These districts were informed of the proposed amendments, and no objections to the proposed amendments were expressed. Instead these districts supported the proposed changes.

Additionally, the social services districts of Onondaga, Oneida, Steuben, Saratoga, Otsego and New York City were surveyed regarding their recoupments of overpayments from children who had been associated with their parents' cases when the overpayments occurred. All these districts informed us that, while the overpayment information was available to the local districts, they did not actively pursue the recoupments of these overpayments from the children once they were no longer associated with the case.

**Rural Area Flexibility Analysis**

## 1. Types and estimated numbers of rural areas:

The proposed amendments would impact the 44 rural social services districts in the State.

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

The rural districts would still hold all active public assistance units accountable for overpayments which occur to the unit. However, the districts would limit recoupment/recovery of overpayments which occur to an assistance unit to adult unit members when a member of the overpaid assistance unit later establishes his/her own assistance unit, becomes a member of another assistance unit or is no longer in receipt of assistance. These amendments would not impose any additional programs, services, duties or responsibilities upon the rural districts. Rural districts are now required to establish and track overpayments for adult and child members of an assistance unit that is overpaid. In this respect, the proposed amendments would simplify the current tracking process by narrowing the group of individuals from whom overpayments can be recovered.

## 3. Costs:

The proposed changes may slightly reduce the dollar amounts collected by rural districts as recoupments of public assistance overpayments, since rural districts will no longer be able to collect overpayments from children receiving public assistance or from adults who received public assistance overpayments as children. However, OTDA anticipates that the fiscal impact of these proposed amendments will be minimal. Anecdotal evidence suggests that rural districts generally attempt to recover from adults in overpaid assistance units in the first instance, since it is less difficult to recover from adults than from children.

The rural districts would experience a minimal administrative savings attributable to the proposed changes. These proposed amendments would simplify the recoupment process for rural districts by eliminating the necessity of attempting to track and recoup public assistance from children who currently receive or who have received benefits. Consequently, rural districts could use the additional staff time to accomplish other tasks.

There would be no new costs for equipment or supplies. The rural districts already have the office equipment necessary to comply with the proposed changes.

There would be minimal costs associated with training district staff in rural areas to comply with the proposed changes. OTDA would issue an administrative directive (ADM) to coincide with the filing of the proposed rule. The ADM would advise the rural districts of the changes. Since these proposed amendments would simplify the current tracking process, extensive training of district staff in rural areas is not necessary.

## 4. Minimizing adverse impact:

These proposed changes may slightly reduce the dollar amounts collected by rural districts as recoupment of public assistance overpayments. However, the rural districts would benefit from the proposed simplification of the current tracking process and the additional staff time that could be directed toward other district priorities.

## 5. Rural area participation:

On December 7, 2007, a day long Breaking the Cycle of Dependency workgroup meeting was held at the offices of the New York State Office of Children and Family Services located at 52 Washington Street, Rensselaer, New York. Some of the social services districts that attended the workgroup meeting included Chautauqua, Niagara, Madison and Tompkins. These rural districts were informed of the proposed rule, and no objections to the proposed amendments were expressed. Instead these districts supported the proposed changes.

Additionally, the social services districts of Steuben, Saratoga and Otsego were surveyed regarding their recoupments of overpayments from children who had been associated with their parents' cases when the overpayments occurred. All these districts informed us that, while the overpayment information was available to the local districts, they did not actively pursue the recoupments of these overpayments from the children once they were no longer associated with the case.

***Job Impact Statement***

A Job Impact Statement is not required for the proposed rule. It is apparent from the nature and the purpose of the proposed rule that it would not have a substantial adverse impact on jobs and employment opportunities. The proposed rule would not impact in any real way the jobs of the workers in the districts. Thus the changes would not have any adverse impact on jobs and employment opportunities in the State.