

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.

Education Department

EMERGENCY RULE MAKING

Definition of Unprofessional Conduct and the Licensure Requirements for Certified Public Accountants and Public Accountants

I.D. No. EDU-26-09-00003-E

Filing No. 1229

Filing Date: 2009-10-27

Effective Date: 2009-10-27

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

Action taken: Amendment of sections 29.10 and 52.13; repeal of Part 70 and addition of new Part 70 to Title 8 NYCRR.

Statutory authority: Education Law, sections 2207(not subdivided), 6501(not subdivided), 6504(not subdivided), 6506(1), (2) and (6), 6507(2)(a), (3), (4)(a), 6508(1), 7401, 7401-a, 7402, 7404, 7406, 7406-a, 7408, 7409 and 7410; and L. 2008, ch. 651

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to revise the Rules of the Board of Regents and the Regulations of the Commissioner of Education in response to public comment received after publication of the proposed rule in the State Register. The proposed amendment implements the requirements of Chapter 651 of the Laws of 2008, which, among other things, expands the scope of practice of public accountancy; recognizes certain foreign education as an alternative to meeting the education requirements for licensure as a certified public accountant; allows the issuance of a foreign limited

permit to applicants with professional qualifications determined to be significantly comparable to the licensure requirements of certified public accountants in New York State; authorizes the issuance of temporary permits to CPAs licensed in another state that the Board of Regents has determined to have significantly comparable CPA licensure requirements; permits out-of-state licensed CPAs to provide non-attest services in this State without a temporary practice permit in certain circumstances; amends the continuing professional education requirements for certified public accountants; and expands registration requirements for accounting firms.

The proposed amendment was adopted as an emergency rule at the June 2009 Regents meeting of the Board of Regents, effective July 26, 2009. A Notice of Proposed Rule Making was published in the State Register on July 1, 2009. The proposed amendment was adopted as a second emergency rule at the September Regents meeting to ensure that the emergency rule adopted at the June 2009 Regents meeting, remained continuously in effect until the effective date of its adoption as a permanent rule to avoid disruption of the implementation of Chapter 651 of the Laws of 2008.

In response to public comment received after publication of the Notice of Proposed Rule Making in the State Register, revisions were made to the proposed rule. The revised rule corrects certain deficiencies and clarifies certain provisions in the rule, in response to public comment. Therefore, a third emergency action is necessary for the preservation of the general welfare in order to immediately adopt clarifying and corrective revisions to the rule in response to public comment and to otherwise ensure that the emergency revised rule, which implements the requirements of Chapter 651 of the Laws of 2008, is enacted to avoid disruption in the practice of public accountancy.

Subject: Definition of unprofessional conduct and the licensure requirements for certified public accountants and public accountants.

Purpose: To implement chapter 651 of the Laws of 2008.

Substance of emergency rule: The Commissioner of Education proposes to amend section 29.10 of the Rules of the Board of Regents and section 52.13 of the Regulations of the Commissioner of Education and repeal and add a new Part 70 to the Regulations of the Commissioner of Education, relating to the education, examination and experience requirements for licensure of certified public accountants; endorsement of out-of-state licenses or foreign licenses; the issuance of foreign limited permits or temporary practice permits; registration of accounting firms; continuing education requirements and the definition of unprofessional conduct. The following is a summary of the proposed amendment:

A new paragraph 13 is added to subdivision (a) of section 29.10 of the Rules of the Board of Regents to define as unprofessional conduct in the practice of public accountancy a licensee's failure to meet certain competency requirements when supervising attest or compilation services or signing or authorizing someone to sign an accountant's report on financial statements. Required competencies for the supervision of compilation services shall include at least 40 hours of continuing education in the area of accounting, auditing or attest during the three years immediately prior to the performance of such services; and maintaining the level of education, experience and professional conduct required by generally accepted accounting standards. A licensee who supervises attest services shall also be required to have at least 1,000 hours of experience in the preparation or review of financial statements or reports on financial statements within the last five years or a peer review satisfactory to the department.

A new paragraph (14) is added to subdivision (a) of section 29.10

of the Rules of the Board of Regents defining as unprofessional conduct a licensee's failure to maintain an active registration with the Department when a licensee engages in the practice of public accountancy or uses the title "certified public accountant" or the designation "CPA" or the title "public accountant" or the designation "PA". Any certified public accountant or public accountant licensed in New York State who is not practicing public accountancy in this State pursuant to Education Law section 7401 and does not use the title "certified public accountant" or the designation "CPA" or the title "public accountant" or designation "PA" may request an inactive status from the Department and will not be required to register with the Department.

A new subdivision (h) is added to section 29.10 of the Rules of the Board of Regents, defining as unprofessional conduct any willful or grossly negligent failure to comply with substantial provisions of Federal, State or local laws, rules or regulations governing the practice of public accountancy by a CPA licensed in another state who is performing non-attest services or any firm that employs such CPA to perform non-attest services pursuant to Education Law section 7406-a and the failure of such licensee to identify his or her state of principal place of business in parentheses following his or her designation.

A new subdivision (i) is added to section 29.10 of the Rules of the Board of Regents to amend the definition of unprofessional conduct to prohibit a licensee or the public accounting firm employing such licensee to directly or indirectly, offer, give, solicit, or receive or agree to receive, a commission for the referral of any product or service to a client if the licensee is performing: attest services; compilation services when the licensee expects, or reasonably might expect that a third party will rely upon the financial statements and the licensee's compilation report does not disclose a lack of independence; an examination of prospective financial information; and/or any other attest service. The prohibitions apply during the period in which the licensee is engaged to perform any of the services defined in the subdivision and the period covered by any financial, accounting or related statements involved in such services. A licensee providing services other than those described in this subdivision may accept a commission for recommending products or services of a third party to a client, provided that the licensee discloses the receipt of the commission to the client prior to the performance of such service. The provisions of this subdivision do not apply to licensees who perform accounting, management advisory, financial advisory, consulting or tax services for an entity that is not required to register with the department under Education Law section 7408.

Paragraph (1) of subdivision (b) of section 52.13 of the Regulations of the Commissioner of Education is amended to define specific curricular content in the professional accounting content area that is required for licensure and those subjects that may be taken to fulfill the credit hour requirement in this area for licensure. This paragraph is also amended to eliminate the requirement for mandatory subjects in the general business content area and replaces these requirements with a list of content areas that may be used to meet the credit hour requirement in this area for licensure.

Section 70.1 of the Regulations of the Commissioner of Education defines the practice of public accountancy and defines the professional skills and competencies used by a licensee when he/she performs accounting, management advisory, financial advisory, and tax services.

Section 70.2 defines the professional study requirements for licensure and requires an applicant to submit evidence of completion of a baccalaureate or higher degree in accountancy that is either registered with the Department; accredited by an acceptable accrediting body; or a degree that the Department has determined to be the substantial equivalent of a registered or accredited program. An applicant who applies for licensure on or after August 1, 2009 must have satisfactorily completed a curriculum of at least 150 semester hours in a program described above unless the applicant was licensed in another state prior to August 1, 2009, in which case, they may meet the education requirements through completion of at least 120 semesters in a program described above. An applicant who applies to the Department for licensure prior to August 1, 2009 is required to have satisfactorily completed a curriculum of at least 120 semester hours in

a program prescribed in this section prior to August 1, 2009 and have submitted the required application forms for licensure to the Department prior to August 1, 2009. In lieu of meeting these education requirements and any experience requirements, the applicant may meet the following requirement: at least 15 years of full-time experience in the practice of public accountancy satisfactory to the State Board.

A new section 70.3 broadens acceptable experience for licensure to include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills under the direct supervision of a certified public accountant licensed in the United States or a public accountant licensed in New York. Two years of acceptable experience are required for applicants who meet the education requirement through completion of 120 semester hours and one year of acceptable experience is required for applicants who complete the education requirement through completion of 150 semester hours. Experience may be gained through employment in public practice, government, private industry or educational institutions. An applicant is required to obtain the necessary experience within 10 years of having passed the licensing examination or they will be required to complete continuing professional education, in an amount determined by the State Board for Public Accountancy.

A new section 70.4 defines the content, passing score and retention of credit criteria for the licensing examination. The proposed amendment provides students with the opportunity to apply for admission to the Uniform CPA Examination upon completion of 120 semester hours of professional study in a regionally accredited college or university which shall include at least one course in each of the mandatory professional accountancy content areas: financial accounting, cost or managerial accounting, taxation, and auditing and attestation services.

A new section 70.5 provides that a license as a certified public accountant in New York may be issued to an applicant licensed in another state or foreign country if the applicant has met licensure requirements significantly comparable to New York. An applicant licensed by a state with significantly comparable licensure requirements, meaning those states recognized by the Department to have significantly comparable requirements, is eligible for a license through endorsement. If the applicant was licensed in a state that did not have significantly comparable licensing requirements, the individual's credentials will be evaluated to determine if his or her credentials are significantly comparable to New York's requirements. In either case, the applicant shall demonstrate four years of professional experience in public accounting in the last 10 years immediately preceding the application for licensure by endorsement.

This section also permits licensure by endorsement of a foreign applicant with an acceptable license, certificate or degree from a foreign country with significantly comparable licensure requirements provided that the applicant meets certain requirements.

Section 70.6 authorizes the Department to issue a two-year limited permit to practice public accountancy in this State to a foreign credentialed accountant if the applicant meets certain requirements described in the proposed amendment. The regulation requires a \$250 fee for issuance of the limited permit.

Section 70.7 authorizes CPAs licensed in another state, with a principal place of business in another state, to apply for a temporary practice permit in order to provide attest and compilation services in New York. The temporary practice permit is valid for up to 180 days during a twelve-month period and would be renewable no more than three times. The proposed regulations also require the submission of application materials and the payment of a \$125 application fee and renewal fee.

Section 70.8 requires all firms, including sole proprietorships, partnerships, LLPs, LLCs, and PCs, to maintain a registration with the Department if the firm is performing attest or compilation services or using the title "CPA" or "CPA firm" or the title "PA" or "PA firm". Firms performing only non-attest services described in Education Law § 7401(3) are not required to, but may, register with the Department.

Section 70.9 implements statutory changes, deletes prior exemptions from mandatory continuing education for individuals who work in private industry or government and specifies that all registered CPAs and PAs are required to pay a \$50 continuing education fee. Any licensee who does not engage in professional practice as defined in § 7401 may file a written request for an exemption from mandatory continuing education.

The proposed amendment also implements a statutory change in the tracking year for continuing education credit from a September 1 - August 31 year to a January 1 - December 31 year. The proposed amendment also allow licensees to meet their continuing education requirement by completing either 40 credits in any combination of the following subject areas: accounting, attest, auditing, taxation, advisory services, specialized knowledge and applications related to specialized industries, and such other areas appropriately related to the practice of accounting as may be acceptable to the Department or by completing 24 credits concentrated in any one subject area. Before this change, licensees were required to complete 40 credits in a combination of the following areas: accounting, auditing or taxation, or 24 credits concentrated, in either accounting, auditing or taxation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-26-09-00003-P, Issue of July 1, 2009. The emergency rule will expire December 25, 2009.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6501 of the Education Law provides that in order for an applicant to qualify for a professional license, the requirements prescribed in the article for each particular profession must be met.

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

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules in the supervision of the practice of the professions.

Subdivision (2) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules relating to pre-professional, professional other educational qualifications required for licensure in the professions.

Subdivision (6) of section 6506 of the Education Law authorizes the Board of Regents to endorse a license issued by a licensing board of another state or country.

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

Subdivision (3) of section 6507 of the Education Law authorizes the State Education Department, assisted by the board for each profession, to establish standards for pre-professional and professional education, experience and licensing examinations as required to implement the article governing each profession, review qualifications in connection with licensing requirements and provide for licensing examinations and re-examinations.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to register or approve educational programs designed for the purpose of providing professional preparation which meet standards established by the Department.

Subdivision (1) of section 6508 of the Education Law authorizes the Board of Regents to appoint a State Board for Public Accountancy for the purpose of assisting the Board of Regents and the State Education Department on matters of professional licensing, practice, and conduct.

Chapter 651 of the Laws of 2008 amended sections 7401, 7402, 7404, 7406, 7407, 7408 and 7409 of the Education Law and adds new sections 7401-a and 7406-a and 7410 to the Education Law.

Section 7401 of the Education Law defines the practice of public accountancy.

Section 7401-a defines attest, certified public accountant or CPA, compilation, firm, principal place of business, public accountant or PA and State.

Section 7402 of the Education Law provides that only an individual licensed or otherwise authorized to practice shall practice public accountancy or use the title certified public accountant or public accountant.

Section 7403 of the Education Law establishes and defines the duties and responsibilities of the State Board for Public Accountancy.

Section 7404 of the Education Law defines the requirements for licensure as a certified public accountant.

Section 7406 of the Education Law authorizes the State Education Department to issue a limited permit to certain applicants licensed by another state which the Board of Regents has determined to have significantly comparable certified public accountant licensure requirements and to issue temporary permits to certified public accountants licensed by another state which the Board of Regents has determined to have significantly comparable licensure requirements, or whose individual licensure qualifications are verified by the Department to be significantly comparable to New York State's requirements. Temporary permits allow the holder to practice in New York State for an aggregate total of 180 days during a twelve month period beginning on the effective date of the permit.

Section 7406-a of the Education Law authorizes certified public accountants, licensed by another state and in good standing, to perform non-attest services in New York without a license or temporary practice permit and provides that certified public accountants performing such services agree to be subject to the disciplinary authority of the Board of Regents.

Section 7407 of the Education Law provides individual and corporate exemptions to the provisions of Article 149.

Section 7408 of the Education Law establishes a registration requirement for public accounting firms that perform attest and/or compilation services and professional services that are incident to attest and/or compilation services or that use the title CPA or CPA firm or the title PA or PA firm, including authorizing the Board of Regents to establish a registration process for public accounting firms. This section also restricts the use of certain titles and designations by non-licensed accountants and establishes reporting requirements for non-licensed accountants issuing financial statements.

Section 7409 of the Education Law establishes mandatory continuing education requirements for certified public accountants and public accountants and authorizes the Board of Regents to establish a registration process for continuing education sponsors.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments to the Rules of the Board of Regents and to the Regulations of the Commissioner of Education are necessary to implement Chapter 651 of the Laws of 2008, which becomes effective on July 26, 2009.

3. NEEDS AND BENEFITS:

The proposed amendment is needed to implement Chapter 651 of the Laws of 2008. This legislation enhances public protection by ensuring that certified public accountants (CPAs) and public accountants (PAs) are professionally accountable for all of the business functions they currently perform by clarifying and expanding the statutorily regulated scope of practice. The law expands the scope of practice to include the types of services that involve the use of professional skills and competencies in matters related to accounting concepts, the recording of financial data or information, and the preparation or presentation of financial statements, including but not limited to management advisory, financial advisory, and tax preparation and advisory services. The proposed amendment would enhance public protection by requiring all licensees and firms to be registered with the Department when providing attest and compilation services;

providing for temporary practice permits when out-of-state licensed CPAs perform attest and compilation services in New York and providing an exemption from participation in continuing professional education only for licensees who are not engaged in the practice of public accountancy.

Public protection is also enhanced by providing greater clarity regarding the issuance of foreign limited permits and requiring participation in mandatory continuing education for all CPAs, even if employed in private industry, government or academia and changes the requirement for complying with mandatory continuing education from a registration year to a calendar year. The law expands the recognized areas of continuing education study to those that contribute to professional practice and growth in professional knowledge, professional competence and ethics.

The existing law was also amended to specifically allow out-of-state licensed CPAs to perform non-attest services such as accounting, management advisory, financial advisory, and tax in New York without a temporary practice permit. As a condition of practicing in New York under this provision, the CPA and the firm that employs him or her agrees to be subject to the disciplinary authority of the Board of Regents.

The expanded definition of the scope of practice includes non-attest services provided by a licensed CPA or PA to one's employer not otherwise required to register with the Department. CPAs and PAs working for business corporations may be employed in positions that result in the payment of commissions or referral fees. The Rules of the Board of Regents need to be amended to clearly define unprofessional conduct for those instances when the acceptance of a commission or referral fee would impair a licensee's independence to perform attest and compilation services.

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: The proposed amendment does not impose any costs beyond those imposed by statute. Chapter 651 of the Laws of 2008 authorizes the Department to collect fees for firm registration, a mandatory continuing education fee and fees for limited permits and temporary practice permits.

The fee for a firm registration is: (1) \$50 for each office of the firm located in New York or \$50 for the firm if the firm has no offices located in New York and (2) \$10 for the sole proprietor or each general partner of a partnership or partner of a limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is located in New York or who is otherwise authorized to practice in New York through a temporary practice permit issued pursuant to section 70.7 of this Part and for each certified public accountant or public accountant licensed in New York that signs or authorizes someone to sign an engagement on behalf of a New York client but whose principal place of business is not located in New York State.

There is also a \$250 fee for individuals applying for limited permits or a renewal of limited permits; \$125 fee for individuals applying for a temporary practice permit or a renewal of such permit and on those licensees who must participate in mandatory continuing education. The proposed amendment also requires a mandatory continuing education fee of fifty dollars (\$50) to be collected from a licensee in addition to the triennial registration fee required by Education Law section 7404 any licensee who is required to register triennially with the Department at the beginning of each triennial registration period.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the registration and use of a professional title or designation by certified public accountants (CPAs) and public accountants (PAs); to the performance of non-attest services by out-of-state licensed CPAs; the receipt of commissions and referral fees by CPAs and PAs; the registration of curricula in public accountancy programs. The amendment does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment requires public accounting firms that are established for the business purpose of lawfully engaging in the practice of public accountancy pursuant to Education Law section 7401(1) and (2) or that uses the title "CPA" or "CPA firm" or the title "PA" or "PA firm" to register with the Department.

The proposed amendment also requires that any licensee that may accept a commission for recommending the products or services of a third party to the client to disclose the receipt of the commission to the client by way of a written disclosure statement to describe the product or service recommended the amount of the commission.

The proposed amendment also requires applicants seeking a limited permit or temporary permit to submit an application form to the Department.

7. DUPLICATION:

The proposed amendment does not duplicate any other existing State or Federal requirements, except as discussed below in the Federal Standards section.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no Federal standards that relate to the registration of public accounting firms and/or the use of a professional title or designation by certified public accountants (CPAs) and public accountants (PAs); to the performance of non-attest services by out-of-state licensed CPAs or to the licensure requirements of CPAs and PAs.

However, the Sarbanes-Oxley Act of 2002 does address commission and referral fees for audit partners in public accounting firms.

Section 210-2.01(c)(8) of the Code of Federal Regulations provides, in pertinent part, as follows:

(8) Compensation. An accountant is not independent of an audit client if, at any point during the audit and professional engagement period, any audit partner earns or receives compensation based on the audit partner procuring engagements with that audit client to provide any products or services other than audit, review or attest services. Any accounting firm with fewer than ten partners and fewer than five audit clients that are issuers (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(f))) shall be exempt from the requirement stated in the previous sentence.

The proposed amendment prohibits licensed public accountants and certified public accountants from receiving a commission or referral fee for the product or service of a third party to a client when performing services that require a licensee's independent judgment. The proposed amendment is more restrictive than the federal law. The federal law only applies to a small segment of the engagements performed by CPAs and PAs employed by publicly traded companies and it only prohibits audit partners from receiving a commission fee, as opposed to the proposed amendment which prohibits all licensees performing certain audit and attest services from receiving commissions. The proposed amendment is needed to ensure public protection by maintaining the independent judgment of licensees when performing certain engagements that require independence.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply with the regulation.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The purpose of the proposed amendment is to implement Chapter 651 of the Laws of 2008 by establishing education, examination and experience requirements for licensure of certified public accountants (CPAs) and public accountants (PAs) and to add provisions relating to the endorsement of out-of-state licenses or foreign licenses; the issuance of foreign limited permits and temporary practice permits, and to amend the definition of unprofessional conduct for CPAs and PAs licensed in New York State.

It is estimated that approximately 2,000 individuals apply for

licensure as CPAs each year. As of January 2009, there are approximately 27,300 registered CPAs in New York, 160 registered PAs in New York, and 3,200 registered public accounting firms in New York State. Demographic information provided by the national membership organization of CPAs indicates that approximately 42% of its membership is employed in public accounting and approximately 48.5% of its members are employed in small firms with nine or fewer owners. Based on these statistics, approximately 5,500 CPAs and PAs are likely to be employed by approximately 1,550 small firms.

2. COMPLIANCE REQUIREMENTS:

The purpose of the proposed amendment is to establish in the definition of unprofessional conduct in the practice of public accountancy: (1) a licensee's failure to maintain an active registration with the Department when a licensee engages in the practice of public accountancy pursuant to Education Law section 7401 or uses the title "certified public accountant" or the designation "CPA" or the title "public accountant" or the designation "PA"; (2) any willful violation of any State, federal or local law by out-of-state licensed CPA performing non-attest services; and (3) a licensee's failure to meet certain competency requirements when a licensed CPA or PA supervises and signs or authorizes someone to sign the accountant's report on financial statements; and defines those instances when a licensed CPA or PA may accept a commission or referral fee and establishes disclosure requirements when such a fee is received.

The proposed amendment also amends the education, examination and experience requirements for licensure as a CPA in New York; the continuing education requirements for CPAs in New York; the registration process for public accounting firms and establishes, with limited exceptions; a process to issue limited permits to foreign credentialed accountants and temporary practice permits to CPAs licensed and in good standing in another state; and amends the process used to issue a license as a CPA to an individual licensed as a CPA in another state or a foreign country who substantially meets New York's licensure requirements.

3. PROFESSIONAL SERVICES:

The proposed regulation will not require any licensee or firm to hire any professional services to comply, including those that are considered "Small Businesses".

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs beyond those authorized by statute. Chapter 651 of the Laws of 2008 authorizes the Department to collect fees for firm registration, a mandatory continuing education fee and fees for limited permits and temporary practice permits.

The fee for a firm registration is: (1) \$50 for each office of the firm located in New York State or \$50 for the firm if the firm has no offices located in New York and (2) \$10 for the sole proprietor or each general partner of a partnership or partner of a limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is located in New York or who is otherwise authorized to practice in New York through a temporary practice permit issued pursuant to section 70.7 of this Part and for each certified public accountant or public accountant licensed in New York that signs or authorizes someone to sign an engagement on behalf of a New York client but whose principal place of business is not located in New York State.

There is also a \$250 fee for individuals applying for limited permits or a renewal of limited permits; \$125 fee for individuals applying for a temporary practice permit or a renewal of such permit and on those licensees who must participate in mandatory continuing education. The proposed amendment also requires a mandatory continuing education fee of fifty dollars (\$50) to be collected from a licensee in addition to the triennial registration fee required by Education Law Section 7404.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The Department believes that the requirements should apply to all firms, regardless of size, to ensure a uniformly high standard of professional practice in the practice of public accountancy. It is not unusual for small entities, including firms, not-for-profit organizations and local governments to contract with small accounting firms for audit services. Failure to apply the provisions of these regulations on a uniform basis could harm these small entities and the public by allowing small CPA firms to provide a lower standard of professional services than larger CPA firms.

7. SMALL BUSINESS PARTICIPATION:

The State Board for Public Accountancy, which includes members who have experience in a small business environment, assisted in the development of the proposed regulation. In addition, the State Education Department provided the New York State Society of Certified Public Accountants, which includes members who own and operate small businesses, with draft regulatory language concerning the proposed regulation and engaged in an ongoing conversation with this organization to ensure that their comments were addressed.

(b) Local Governments:

The purpose of the proposed amendment is to implement Chapter 651 of the Laws of 2008 by establishing education, examination and experience requirements for licensure of certified public accountants and public accountants and add provisions relating to endorsement of out-of-state licenses or foreign licenses; the issuance of foreign limited permits or temporary practice permits, and to amend the definition of unprofessional conduct for certified public accountants and public accountants licensed in New York State. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect individuals who apply for licensure as certified public accountants (CPA), including those that are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Each year about 1,750 individuals apply for licensure as a CPA. The Department estimates that about eight percent or about 140 of these individuals come from a rural county of New York State.

The proposed amendment also affects licensed CPAs and PAs who practice in a rural county in New York. As of January 13, 2009, the Department's records indicate that 2,206 licensed CPAs and 9 licensed PAs come from a rural county of New York State. In addition, the Department estimates that approximately 260 public accounting firms are located in a rural county in New York State.

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

The purpose of the proposed amendment is to establish in the definition of unprofessional conduct in the practice of public accountancy: (1) a licensee's failure to maintain an active registration with the Department when a licensee engages in the practice of public accountancy pursuant to Education Law section 7401 or uses the title "certified public accountant" or the designation "CPA" or the title "public accountant" or the designation "PA"; (2) any willful violation of any State, federal or local law by out-of-state licensed CPA performing non-attest services; and (3) a licensee's failure to meet certain competency requirements when a licensed CPA or PA supervises and signs or authorizes someone to sign the accountant's report on financial statements; and defines those instances when a licensed CPA or PA may accept a commission or referral fee and establishes disclosure requirements when such a fee is received.

The proposed amendment also amends the education, examination and experience requirements for licensure as a CPA in New York; the continuing education requirements for CPAs in New York; the registration process for public accounting firms and establishes, with limited exceptions; a process to issue limited permits to foreign

credentialed accountants and temporary practice permits to CPAs licensed and in good standing in another state; and amends the process used to issue a license as a CPA to an individual licensed as a CPA in another state or a foreign country who substantially meets New York's licensure requirements.

The proposed amendment does not require any licensee or firm to hire any professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs beyond those authorized by statute. Chapter 651 of the Laws of 2008 authorizes the Department to collect fees for firm registration, a mandatory continuing education fee and fees for limited permits and temporary practice permits.

The fee for a firm registration is: (1) \$50 for each office of the firm located in New York State or \$50 for the firm if the firm has no offices located in New York and (2) \$10 for the sole proprietor or each general partner of a partnership or partner of a limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is located in New York or who is otherwise authorized to practice in New York through a temporary practice permit issued pursuant to section 70.7 of this Part and for each certified public accountant or public accountant licensed in New York that signs or authorizes someone to sign an engagement on behalf of a New York client but whose principal place of business is not located in New York State.

There is also a \$250 fee for individuals applying for limited permits or a renewal of limited permits; a \$125 fee for individuals applying for a temporary practice permit or a renewal of such permit. The proposed amendment also requires a mandatory continuing education fee of fifty dollars (\$50) to be collected from a licensee in addition to the triennial registration fee required by Education Law section 7404.

4. MINIMIZING ADVERSE IMPACT:

The Department believes that these requirements should apply to all licensees and firms, regardless of whether or not they are located in a rural area, to ensure a uniform standard of professional practice in the practice of public accountancy. Failure to apply the provisions of these regulations on a uniform basis could harm the public by allowing certain CPA firms and licensees to provide a lower standard of professional services than other licensees or firms.

5. RURAL AREA PARTICIPATION:

The State Education Department solicited comments from the State Board for Public Accountancy and the Society of Certified Public Accountants, which includes members located in all areas of New York State, including rural areas of the State.

Job Impact Statement

The purpose of the proposed amendment is to implement Chapter 651 of the Laws of 2008 by establishing education, examination and experience requirements for licensure of certified public accountants (CPAs) and public accountants (PAs) and add provisions relating to endorsement of out-of-state licenses or foreign licenses; the issuance of foreign limited permits or temporary practice permits, and to amend the definition of unprofessional conduct for CPAs and PAs licensed in New York State.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making on July 1, 2009, the State Education Department received the following comments on the proposed rule.

1. COMMENT: A few comments cited a lack of communication to those affected by the statutory and regulatory changes, the lack of a comment period prior to the effective date of the regulations and a short implementation period for the new law and regulations.

RESPONSE: Chapter 651 of the Laws of 2008 was signed by the Governor on January 27, 2009, with a 180-day implementation pe-

riod, and became effective on July 26, 2009. When developing the emergency regulations, the Department complied with the State Administrative Procedure Act. The Department sought input from the State Board for Public Accountancy and the New York State Society of Certified Public Accountants and communicated with the press and worked with the state membership associations to communicate with licensees on the proposed amendment.

2. COMMENT: Several commenters focused on provisions of the competency requirement when a licensee supervises or signs or authorizes someone to sign the accountant's report on financial statements. Specifically, commenters suggested that small firms could not meet the competency standard; that prospective remediation be considered or that certain licensees be "grandfathered"; that certain engagements be exempt; that the requirement be limited to engagement partners; and that a specialist credential be considered. A commenter also suggested that the provision would be difficult to police and monitor.

RESPONSE: The Department has proposed several changes to the competency requirement including establishing a separate standard for compilation services. The proposed revisions also provide for a future implementation date for those licensed prior to July 26, 2009. The Department believes that it will be able to monitor compliance through firm registration and quality review.

3. COMMENT: A few comments suggested that CPAs who do not practice for a fee/salary but do perform certain charitable work such as serving on the Board of Directors of a non-for-profit entity will be prevented from continuing to do this work because of the cost of maintaining a registration and completing CPE.

RESPONSE: The Department believes that the registration and continuing professional education requirements are appropriate for individuals serving as board members if the individual uses his/her professional title, practices public accountancy or if the licensee participates on an organization's audit, finance, or budget committee, as the not-for-profit is relying on the licensee's professional skills and knowledge.

4. COMMENT: One comment disagreed that CPAs employed in private industry, government and academia should be required to meet mandatory continuing education requirements, viewing such requirements as a revenue source for national and state professional associations without any beneficial outcome.

RESPONSE: The new public accountancy law requires all licensed CPAs who practice the profession as defined in the law or who use the title "certified public accountant" or the designation "CPA" to participate in mandatory continuing education.

5. COMMENT: One comment suggested that an out-of-state licensed CPA whose principal place of business is in another state should be required to identify the state of their principal place of business in parentheses when performing non-attest services in New York.

RESPONSE: The Department proposed revisions consistent with this comment.

6. COMMENT: One comment suggested that the term "firm" be replaced with the term "entity" when defining the owner of the financial statements that the accountant is reporting on.

RESPONSE: The Department will propose replacing the word "firm" with the term "client".

7. COMMENT: One commenter suggested that additional wording be added to section 70.8 of the Regulations of the Commissioner to clarify that a firm that performs non-attest services may register with the Department and to section 70.9 of the regulations to clarify the applicability of continuing education requirements to licensees resuming practice during a registration period.

RESPONSE: The Department has proposed revisions to clarify the rule in these areas.

8. COMMENT: One comment suggested that the standards for endorsement of an out-of-state CPA license be changed to a standard that requires the applicant to meet either but not both endorsement requirements.

RESPONSE: The Department believes that the proposed regulation will streamline the endorsement of an out-of-state license process while maintaining public protection.

9. COMMENT: One comment suggests that the definition of skills and competencies be revised as it is over-inclusive and overly complex.

RESPONSE: The Department disagrees with this comment. The Department considered references to various professional standards when drafting the regulations, however, such standards do not define the skills and competencies necessary to complete a professional engagement.

10. COMMENT: One comment recommended a revised definition of "commission" and described the client disclosure provisions of the regulation as overly strict, troubling and too burdensome and formalistic to be applied in all circumstances.

RESPONSE: The Department has proposed revisions to the definition of commission. The Department believes that it is in the public interest for a client to receive appropriate disclosure about earned commissions from a CPA or a PA who is hired to perform professional services. The Department disagrees that the client disclosure requirement is too burdensome and formalistic to implement.

11. COMMENT: One comment noted that the Legislature, in its statement in support of the statute, made it clear that the application for a temporary practice permit was to be electronic.

RESPONSE: The Department is working on a process that will allow applicants to submit the temporary practice permit application electronically by facsimile or as an e-mail attachment.

12. COMMENT: The commenter urges the Department not to take the position that an individual may never apply for a new temporary practice permit once it has been issued.

RESPONSE: Chapter 651 of the Laws of 2008 provides that no more than one temporary practice permit may be issued to any individual applicant, provided that each permit may be renewed by the Department up to three times.

13. COMMENT: The commenter recommends that the Department make use of the National Association of State Boards for Public Accountancy's (NASBA) list of substantially equivalent states when making a determination of whether an applicant's licensure qualifications are significantly comparable to New York's requirements.

RESPONSE: The Department believes that the regulation provides sufficient authorization for the Department to utilize NASBA's list of significantly equivalent states.

14. COMMENT: One comment recommends that the phrase "upon the recommendation of the state board" as found in section 70.7(a) of the proposed rule, not be construed as an independent step in the process of issuing a limited permit or temporary practice permit.

RESPONSE: Education Law § 7406(1) and (2)(a) require the recommendation of the State Board for Public Accountancy for the issuance of a limited license or a temporary practice permit.

15. COMMENT: One comment indicates that requiring an individual practicing with a temporary practice permit to identify his or her state of principal place of business in parenthesis following his or her title or designation will be burdensome in practice.

RESPONSE: The Department believes that it is in the public interest for the consumer to be informed that the person that it hired to perform professional services may have a principal place of business outside of New York State.

16. COMMENT: One comment suggests that the list of partners, owners, or shareholders of a firm and the list of all CPAs or PAs whose principal place of business is in New York that are required as part of the firm registration application be interpreted as requiring only a listing of partners whose principal place of business is in New York.

RESPONSE: The Department believes that the firm registration form and accompanying instructions clarify that the list of partners, owners, or shareholders of a firm be only those whose principal place of business is in New York.

17. COMMENT: One comment urges the Department to remove from the fee calculation partners who obtain a temporary practice permit in New York and also suggests that clarifying language be added to the regulation that limited liability partnerships may not have general partners and that the per capita fee be rewritten to apply to partners of limited liability partnerships.

RESPONSE: The Department disagrees with the suggestion that partners, owners or shareholders practicing in New York under a temporary practice permit be excluded from the fee calculation because removing these individuals from the fee calculation could result in some firms paying no fee to conduct business in New York. The Department, however, has proposed revisions to the regulations by adding clarifying language with regard to partners of a limited liability partnership as suggested.

18. COMMENT: One comment suggests that all affirmations required for firm registration be based on the knowledge of the firm or individual signing the firm registration or renewal application.

RESPONSE: The Department anticipates that the affirmations contained in the new firm application forms will address these concerns.

19. COMMENT: The commenter hopes that the new statute and proposed rule will create an opportunity to examine the possibility of e-filing.

RESPONSE: The Department, in conjunction with several other state agencies, is working on a request for proposals to identify possible vendors that could be hired to implement an on-line application and registration renewal process.

20. COMMENT: The commenter believes that greater attention needs to be paid to foreign applicants for licensure and that more elements of the process need clarification, including the Department's acceptance of the International Uniform Certified Public Accountant Qualification Examination (IQEX).

RESPONSE: The State Board for Public Accountancy recognized the IQEX examination for applicants licensed by the five foreign organizations that had entered into a mutual recognition agreement with NASBA and the AICPA.

21. COMMENT: The commenter believes that the Department should accept transcripts from applicants themselves rather than imposing a requirement that the applicant obtain a certified copy of their transcript directly from their university for provision to the Department.

RESPONSE: The department has a long-standing policy not to allow transcripts to be submitted directly by applicants due to the possibility of submission of fraudulent documents.

22. COMMENT: A commenter urges that the Department agree to either impose a pro-rated continuing education requirement appropriate for the remainder of the year or extend the deadline for compliance with the continuing education requirement for the same transition being given to active CPAs.

RESPONSE: The new accountancy law requires all CPAs practicing within the scope of practice of public accountancy to be registered and participate in mandatory continuing education. The new law provides for a four month transition period for continuing education taken during the period September 1, 2008 through December 31, 2008. The law does not provide for a pro-rated continuing education requirement or an extension of the deadline for compliance with the continuing education requirement.

23. COMMENT: The commenter believes that the State Board for Public Accountancy in conjunction with the New York State Society of Certified Public Accountants and the Internal Revenue Service need to address the non-CPAs who are allowed to prepare tax returns as paid preparers.

RESPONSE: The Board of Regents regulatory authority is limited to individuals licensed under Article 149 of the Education Law. It is outside the Regents authority to regulate non-licensed tax preparers that are regulated by the Department of Taxation and Finance under Article 1 of Tax Law.

Department of Environmental Conservation

NOTICE OF ADOPTION

Trapping Regulations

I.D. No. ENV-33-09-00004-A

Filing No. 1223

Filing Date: 2009-10-22

Effective Date: 2009-11-10

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

Action taken: Amendment of sections 6.1, 6.2 and 6.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-1101, 11-1103 and 11-1105

Subject: Trapping regulations.

Purpose: To set trapping seasons for beaver, river otter, mink, and muskrat; and to improve general trapping regulations.

Text or summary was published in the August 19, 2009 issue of the Register, I.D. No. ENV-33-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, email: grbatche@gw.dec.state.ny.us

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

Assessment of Public Comment

The department received comments on the proposal. A summary of these comments and the department's response follow:

Comment: The beaver and muskrat trapping season in wildlife management units 8H, 8J, 8M, 8N, 8P, and 8R should be March 1st to April 15th instead of November 25th to February 15th. This will minimize conflicts with deer and waterfowl hunters, and allow the taking of beaver in prime condition. It would also allow "open water" trapping instead of trapping under ice conditions.

Response: The department rarely receives complaints of conflicts between hunters and trappers based on the chronology of hunting and trapping seasons. Trappers and hunters are often afield at the same time without conflict. One of the principle reasons for the earlier trapping season date for beaver in these locations is to assure that problem beaver may be used for their fur values, rather than being discarded when trapped under a nuisance permit.

Comment: Several comments strongly supporting the department's proposals were received.

Response: The department appreciates the support for the proposal. Prior to formal rule making, the department met with many trappers and leaders of the statewide trapping organization to make sure we understood the views and attitudes of trappers on season dates and other regulatory reforms.

Comment: The muskrat trapping season in the western part of the State should start November 1st and end in early March to take advantage of open water trapping conditions.

Response: The proposed season date for the opening of muskrat trapping (November 25th) retains some open water trapping and represents the majority of input received during meetings held with trappers.

Comment: I do not support the change to the regulation on setting body-gripping traps on land. It will prevent trappers from setting traps on trees for mink and fisher.

Response: The proposed regulation will not impact the setting of body-gripping traps on trees for catching mink or fisher. It simply allows the setting of small "110" sized traps, with or without bait, at

ground level and below four feet, an inadvertent omission in the original regulation that is being corrected by the department's proposal.

Comment: The trapping seasons for beaver, mink, and muskrat should be the same to allow trappers setting traps for beaver to keep mink and muskrat.

Response: While the department agrees that concurrent trapping seasons are desirable, there are circumstances when management concerns necessitate the separation of seasons. For example, in some cases beaver seasons should be shorter than seasons for mink and muskrat to make sure beaver are not overharvested in a specific wildlife management unit.

Comment: The trapping seasons should always open on a weekend, rather than on a "fixed" calendar date. This will enable young trappers to set traps for an entire weekend.

Response: The department appreciates interest in recruiting youths. With regard to opening dates, the department has previously led outreach efforts to determine preferences for fixed opening dates versus a calendar formula. Land seasons currently open on a fixed date and therefore, the change to a fixed date for water trapping is consistent with current regulations. The department believes that trappers (including young trappers) will have an easier time planning for the annual trapping season by using fixed calendar dates, rather than variable dates that always open on a weekend. The department agrees that recruiting young trappers is very important and the new youth mentoring program provides a new opportunity for youth participation and the department will continue to aggressively promote this program.

Comment: The restrictions on the use of body-gripping traps when set in water should be eliminated. Instead, trappers should be given educational materials to learn how to avoid catching river otter in beaver traps.

Response: The department has determined that reliance on a voluntary approach is ineffective in preventing river otter from being caught in traps set for beaver. For this reason, beaver trappers are required to modify their traps to avoid the accidental capture of a river otter.

Comment: The mink and muskrat trapping season should open on November 10th throughout the Southern Zone, instead of November 25th in central and western New York.

Response: There has been little demand for these trapping season dates from trappers who have previously contacted the department. The department will continue to meet with trappers from this area to monitor their preferences for future trapping season dates.

Comment: The beaver trapping season should open the day after the close of the regular deer firearms season. This would reduce the risk of a trapper being the victim in a hunting incident related to deer hunting.

Response: The department has not received a significant number of complaints about conflicts between hunters and trappers during the regular firearms deer season. Many trappers enjoy trapping and deer hunting at the same time, and the department does not see a need to shorten the trapping season to avoid the deer season.

Comment: A 48 hour trap check interval should be in place throughout New York for trapping in water.

Response: The department agrees that a 48 hour trap check interval for traps set in water is appropriate. However, the department only has the legal authority to establish a longer trap check interval in the Northern Zone. A change in law would be needed to extend the trap check interval in the Southern Zone.

Comment: The beaver, mink, and muskrat trapping season should open on November 1st when there are easier, open water trapping conditions.

Response: A central reason for the proposed season dates is to take advantage of open water trapping conditions. All of the proposed trapping season dates attempt to provide a balance between open water trapping and the primeness of furbearer pelts.

Comment: There should be a common opening date for all species trapped in water. The season should open early in November.

Response: New York is a large, diverse State with great variation in

environmental conditions. The proposed trapping season dates attempt to recognize this variation while also taking into account the preferences expressed by trappers to department personnel.

Comment: The beaver season should extend into late April instead of ending in winter, especially in the Northern Zone.

Response: The department's proposal includes a closing date of April 7th in the Northern Zone and central and eastern New York. The proposed season dates provide for open water trapping opportunity both at the start of the season as well as at the end, and this season structure is expected to satisfy a large majority of trappers in these areas based on comments received by department personnel.

Comment: The current beaver trapping season dates in wildlife management unit 4S should remain unchanged. The proposed opening date (November 10th) is too early and the proposed closing date (April 7th) is too late. The beaver and otter season should run concurrently.

Response: The department's proposal seeks to provide additional trapping opportunity in this wildlife management unit in response to opinions expressed by trappers. The department has proposed a shorter river otter trapping season in this unit to protect river otter from the potential for overharvest.

The department has carefully considered the comments received on this proposal and has concluded that the original proposal remains appropriate. The department will continue to carefully monitor trapper opinions about season dates and chronology, and will consider future adjustments to trapping season when warranted by both biological considerations and trapper preferences.

Division of Housing and Community Renewal

NOTICE OF ADOPTION

Regulations Govern Management and Supervision of Mitchell-Lama Housing Companies

I.D. No. HCR-15-09-00003-A

Filing No. 1224

Filing Date: 2009-10-23

Effective Date: 2009-11-10

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

Action taken: Amendment of Parts 1700, 1725, 1727, 1728, 1729, 1730, 1731, 1732 and 1750, repeal of Parts 1710, 1711, 1712, 1713 and 1740, and addition of Part 1760 to Title 9 NYCRR.

Statutory authority: Private Housing Finance Law, sections 32(3), 32-a(6) and 84(9)

Subject: The regulations govern management and supervision of Mitchell-Lama housing companies.

Purpose: To streamline and update the regulations to reflect contemporary management and supervision practices and current law.

Substance of final rule: The adopted regulations alter the Mitchell-Lama Regulations in the following general manner:

I. PART 1700 - Scope and Definition

Part 1700 is amended to:

(1) Add more definitive standards governing "waivers" of the regulations;

(2) Add a provision allowing DHCR to take equitable considerations into account when making its supervisory determinations;

(3) Allow modifications to eliminate duplicative supervisory functions by other governmental agencies, in accordance with a recent amendment to the Mitchell-Lama Law;

(4) Remove original construction and design standards and delete references to the regulations as a "manual."

II. PARTS 1710 through 1713 - Subchapter B: Design Standards and Procedures for Limited-Profit and Limited-Dividend Housing Projects.

Parts 1710, 1711, 1712, and 1713 are repealed in their entirety.

III. PART 1725 - General Administration

Part 1725 is amended to:

(1) Clarify regulations governing "Identity of Interest" ("IOI") contracts;

(2) Prohibit a mutual housing company (cooperative) board member from voting on a managing agent's contract, for two years after the agent has employed a family member of that board member;

(3) Strengthen prohibitions on unauthorized payments to and from directors, including payments regarding all contracts entered into by the housing company.

IV. PART 1727 - Occupancy

Part 1727 is amended to:

(1) Incorporate references to DHCR's computerized waiting list system, known as the Automated Waiting List ("AWL"), which enables improved screening and monitoring of applicants;

(2) Require applicants to be eligible at both time of application and admission to a development and require that at least one original, adult applicant be a member of the family at the time of admission;

(3) Reduce the occupancy preference given to internal transfers from 80% to 75% of admissions;

(4) Codify existing policy waiving DHCR pre-approval for new admissions in housing developments where there is less than a one-year waiting list and a history of housing company compliance;

(5) Add a new prohibition against warehousing apartments;

(6) Eliminate the need for DHCR pre-approval for the majority of commercial leases;

(7) Increase the partial income exception regarding the calculation of admission rent and surcharges for "secondary wage earners."

(8) Revise standards for determining permissible household size by removing references to gender, age, and marital status.

(9) Permit a housing company to (a) upon proper notice of termination and, if applicable opportunity to cure, go directly to court to seek eviction of residents not entitled to occupancy, and (b) accept rent when a "succession" appeal is pending before the Division without waiving its objection to the tenant's possession.

V. PART 1728 - Budget and Fiscal

Part 1728 is amended to:

(1) Reduce the time period for DHCR review of housing company budgets in connection with a rent increase application;

(2) Eliminate the need for full budget review where the rent increase requested by a housing company is less than the Consumer Price Index (CPI).

(3) Reduce the number of required bids for purchase contracts while ensuring that minority- and women-owned businesses are included in such bidding processes;

(4) Eliminate prior DHCR approval for contracts of less than \$100,000;

(5) Forestall the requirement for DHCR approval of progress payments on contracts until 75% of the contract has been paid;

(6) Require purchases and contracts for occasional repairs and maintenance (plumbing, painting, etc.) which exceed \$100,000/annum to be competitively bid, even if broken up into smaller contracts;

(7) Require that all IOI contracts obtain prior DHCR approval;

(8) Enable DHCR to impose more stringent supervision on any contract, or category of contract, upon a determination that such additional supervision is necessary;

(9) Allow for less stringent provisions in the case of contracts arising from preservation agreements or private mortgage refinancing;

VI. PART 1729 - Project Management

Part 1729 is amended to:

(1) Remove the requirement that a managing agent be selected through competitive bidding when the selection is part of a housing company preservation plan;

(2) Allow managing agents to automatically renew their contracts upon housing company concurrence but without prior DHCR approval, when certain performance standards have been met;

(3) Consolidate existing remedies and add new remedies allowing DHCR to address recalcitrant management.

VII. PART 1730 - Insurance

Part 1730 is amended to:

(1) Increase liability protection to reflect and adhere to current business practices;

(2) Reduce DHCR regulation of required insurance, thus enabling the housing companies to use their business judgment to purchase the appropriate amount of insurance.

VIII. PART 1731 - Fire Prevention and Safety

Part 1731 is amended to:

(1) Reduce DHCR supervision of housing company fire prevention measures;

(2) Require housing companies to comply with all applicable fire safety standards.

IX. PART 1732 - Energy Conservation

Part 1732 is amended to:

(1) Increase housing company discretion regarding the proper energy conservation measures to take while operating the developments.

X. PART 1733 - Partnership Relations and Transfers of Interests in Rental Housing

Part 1733 was included as a new Part in the regulations proposed on April 15, 2009. However, it had already been adopted under separate rulemaking proceedings prior to the current rulemaking process and no further changes to Part 1733, as previously adopted, have been proposed under the instant Notice of Rule Making or Notice of Adoption. Therefore, Part 1733 has been removed from the text of the adopted regulations.

XI. PART 1740 - Chart of Accounts for Regulated Housing Companies

Part 1740 is repealed in its entirety.

XII. PART 1750 - Dissolution

Part 1750 is amended to:

(1) Address the effects of "reconstitution" by housing company;

(2) Require that a housing company give tenants immediate notice of any dissolution application;

(3) Require that a housing company submit a title search with any dissolution application.

XIII. PART 1760 - Redevelopment and Refinance

Part 1760 is added to:

(1) Codify procedures for housing companies to obtain DHCR approval for new financing;

(2) Enable a fast-track exception to obtaining DHCR's approval for refinancing when the new lender is a governmental source with its own loan underwriting criteria.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1700.2(a)(7), (13), 1725-3.1(d), 1725-3.2(a), 1725-3.5, 1725-5.3(a)(2), 1727-8.2(a), Subpart 1732-3 and Part 1733.

Text of rule and any required statements and analyses may be obtained from: Gary R. Connor - General Counsel, New York State Division of Housing and Community Renewal, 25 Beaver Street - 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nysdhcr.gov

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

The Division made minor changes to the final regulations that do not have an impact on the regulatory effects of the regulations as they were originally proposed. Specifically, the agency relocated language from a definition regulation to the controlling regulation and clarified the language of regulations to properly express the purpose and intent of the revision. In addition, grammatical errors were corrected. As a result, revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not necessary.

Assessment of Public Comment

A Notice of Proposed Rule Making was published in the State Register on April 15, 2009. Below is an assessment of the written comments received by the agency since publication of the proposed rules and the comments presented at a public hearing held by the agency on May 27, 2009 in New York City.¹ This assessment specifies the major ISSUES raised in submissions on amendments to the Mitchell-Lama regulations, SIGNIFICANT ALTERNATIVES suggested, and sets forth the AGENCY RESPONSE with respect to such issues and proposed alternatives (which includes statements as to why any significant alternatives were not incorporated).

Issue:

The definition of "Family Member" in Section 1700.2(a)(7) of the proposal does not include grandparents, grandchildren, nieces, nephews, mother-in-law, father-in-law, brother-in-law or sister-in-law.

Significant alternative(s):

The new regulation should track the definition found in New York City's Department of Housing Preservation and Development regulation.

Agency Response:

The proposed regulation is intended to be in accord with the statutory provisions on succession of other programs that DHCR administers. As a result, the subject section has been revised to be consistent with such provisions.

Issue:

Proposed Subpart 1725-2 ("Boards and Shareholders") should require term limits for housing company board members.

Significant alternative(s):

None, other than as noted above.

Agency Response:

This issue is not a subject of the proposal. As a result, no revision of the proposed regulation Subpart will be undertaken.

Issue:

Proposed Section 1725-3.1(d) requires that a majority of all stockholders shall constitute a quorum for purposes of any stockholders' meeting.

Significant alternative(s):

The proposed regulation should allow for a lesser percentage.

Agency Response:

The section has been revised to reflect that it applies to stockholders' meetings and to allow for a lesser quorum as set forth in BCL § 608(b), except in the case of a proposed dissolution of the housing company.

Issue:

Proposed Section 1725-3.5 is confusing. It uses the term "transcript" which appears to require a housing company to use a stenographer to prepare and submit a full transcript of each board meeting to DHCR.

Significant alternative(s):

None, other than to change "transcript" to "copy."

Agency Response:

The word "transcript" has been changed to "copy" to reflect that only the minutes of each board meeting must be provided to DHCR.

Issue:

Proposed Section 1727-1.4(d) requires that "[u]pon the request of an applicant, the housing company is obligated to advise said applicant of his or her position on the waiting list."

Significant alternative(s):

It was suggested that "[t]he waiting lists should be published by first and last name of applicant."

Agency Response:

The current process of using last names allows applicants to track their position without implicating privacy concerns. As a result, no revision of the proposed regulation will be undertaken.

Issue:

Proposed Section 1727-2.1 permits a housing company to assess a surcharge on those tenants whose annual income exceeds the limit set therein. Conversely, § 1727-5.3(a)(6) permits eviction of any tenants in such over-income status.

Significant alternative(s):

DHCR should (i) reconcile the regulations to mandate that a housing company be allowed only to assess a surcharge on over-income tenants, and (ii) remove the option allowing for the commencement of an eviction based on a tenant's income level.

Agency Response:

The proposed regulation 1727-5.3(a)(6) tracks the statutory language of the PHFL. No revision of the proposed regulation will, therefore, be undertaken.

Issue:

The standard for commencing an eviction proceeding under Section 1727-5.3(a)(2) is too lenient.

Significant alternative(s):

The proposed regulation should permit eviction to commence only upon violation of a "substantial" provision of the corporate governing documents as well as the lease agreement.

Agency Response:

In 1727-5.3(a)(2), the word "substantial" has been added before the word "provision" to make the grounds for termination under this section consistent.

Issue:

The proposed regulations should be revised to permit or recognize co-op residents' councils.

Significant alternative(s):

None, other than as noted above.

Agency Response:

Residents' councils were intended to exist until an initial co-op board was elected by the shareholders. Having a residents' council thereafter would be redundant. Therefore, the only revision undertaken was a clarification that DHCR employees are required to be on boards only if so directed by DHCR.

Issue:

The language of Section 1727-8.2(a) is unclear and deprives the applicant of the opportunity to demonstrate actual move-in date through documentary evidence (and is, therefore, not in keeping with the anti-eviction policy underpinning the Mitchell-Lama program). A question was also raised as to when, for purposes of succession, a reduced co-residency period applied. In addition, it was noted that a clause within paragraph (2) of the section was missing language.

Significant alternative(s):

It was suggested that the new regulation should follow the decision of *Renda v. DHCR*, 22 A.D.3d at 383, 802 N.Y.S.2d at 656 and permit the succession applicant to demonstrate residency in the housing accommodation through other evidence and not only via the annual certification or notice of change in family. It was also suggested that the reduced co-residency period should apply to the tenant of record and not "where a family member is a senior citizen or disabled person."

Agency Response:

Renda v. DHCR does not provide authority for the commentator's

position. The regulations have always required a succession applicant to provide documentary evidence of primary residence and to have been listed on the annual income affidavit for the required period of time (or the notice of change in occupancy, when applicable). The regulations are drafted to protect those who would legitimately succeed as well as to prevent unqualified persons from circumventing the waiting list. Furthermore, the reduced co-residency requirement is intended to apply to a family member who is a senior citizen or disabled person in order to facilitate such persons' ability to find suitable housing of which they generally are in greater need. The proposed regulation has been revised to clarify that the filing of the Notice of Change in Family operates to provide proof of the date of occupancy until the date the annual income affidavit must be filed, but that the succession applicant must otherwise have been listed on the annual income affidavit and must also provide documentary evidence of his primary residence for the required period of time. In addition, the proposed regulation has been revised to clarify the co-residency period requirement and missing language was re-inserted.

Issue:

The requirement to provide budget projections for two years, in 1728-1.2(a), was criticized as "unrealistic." It was also suggested that rent determinations take too long.

Significant alternative(s):

DHCR should not require that a housing company's budget be established two years ahead of time, but instead should allow for changes as a result of economic volatility.

Agency Response:

In its proposal, DHCR reduced certain time periods and areas for DHCR review in order to make budget information more current while still providing residents sufficient time to prepare for increased carrying charges. As a result, no revision of the proposed regulation will be undertaken.

Issue:

The proposal should prohibit fuel oil futures contracts.

Significant alternative(s):

The commentator suggested that all heating fuel budgeting should be based on actual current expenses as outlined in proposed section 1728-1.3(d) which applies to electric, gas and steam charges.

Agency Response:

DHCR has found that locking in fuel oil prices has a stabilizing effect on budgets. As a result, no revision of the proposed regulation will be undertaken.

Issue:

Section 1728-4.1(b), regarding competitive bidding for purchases and contracts, is too open-ended; bidding should be mandatory for all purchases.

Significant alternative(s):

Section 1728-4.1(b) should require that "no less than three bidders must be solicited by the housing company[.]" rather than requiring competitive bidding "to the fullest extent possible." In addition, competitive bidding should also be required for fuel oil contracts.

Agency Response:

DHCR recognizes that there are circumstances under which such competitive bidding may not be feasible. As a result, no revision of the proposed regulation will be undertaken.

Issue:

Proposed Section 1728-4.2 ("Purchases and Contracts of Less than \$100,000") should be revised.

Significant alternative(s):

Larger housing companies should be allowed higher thresholds with respect to purchases and construction supervision.

Agency Response:

DHCR's analysis demonstrates that the size of the company has less impact on the need for bidding than the kind of contract. As a result, no revision of the proposed regulation will be undertaken.

Issue:

Anti-warehousing provisions should be enhanced.

Significant alternative(s):

The Regulations should require that vacant apartments be offered and filled, based on the wait list, up to the date of dissolution.

Agency Response:

Offering apartments until the date of actual dissolution would be difficult to enforce and run contrary to the intent of a final dissolution vote. Nevertheless, proposed Section 1727-1.5 ("Warehousing") expressly creates a new, affirmative obligation for a housing company (including its principals and personnel) to fill all vacancies. As a result, no further revision of the proposed regulation will be undertaken.

Issue:

The requirements for dissolution under proposed Part 1750 ("Voluntary Dissolution") were said to lack clarity and proper protections, particularly with respect to the number of votes required, the plans that

must be prepared and distributed, the use of proxies and the use of housing company funds.

Significant alternative(s):

Alternatives ran the gamut from prohibition of all proxies to special assessments for expenses associated with dissolution to spending caps to additional funding for competing dissolution studies.

Agency Response:

Generally, these proposals exceeded the scope of the amendments under consideration and would be more appropriate as the subject of a separate review of the dissolution regulations. As a result, no revisions will be undertaken with respect to these comments, except that the regulations were clarified at 1750.13(c)(1) to confirm that the current prohibition on proxies for the first dissolution vote remains in effect.

Issue:

The proposed dissolution regulations do not address the effect of these amendments on pending dissolution applications.

Significant alternative(s):

Pending dissolution applications should be allowed to proceed under the old regulations (i.e., "grandfathered").

Agency Response:

As the dissolution process requires a number of discrete steps, there is no good policy rationale for grandfathering those steps undertaken after the effective date of the proposed amendment. Therefore, 1750.19 was added to clarify that those steps taken under the present regulations remain effective, while any activities commencing after the effective date of the proposed regulations must conform to the amendments.

Issue:

The delivery of the Notice of Intent to each tenant in its entirety is problematic due to the volume of paper and certain privacy concerns.

Significant alternative(s):

Create a more streamlined notice which still must be served on each tenant.

Agency Response:

Section 1750.3(a) was modified so that the notice of intent (without supporting exhibits) would be served on each tenant as a minimal service requirement. The full notice of intent, including all exhibits (other than those which contain information protected by a right of privacy) must be available for inspection by the tenants on request at a location at or near the premises and tenants must be so notified.

¹ DHCR also held a public hearing in Syracuse, New York on May 29, 2009 but received no comments.

Department of Labor

EMERGENCY RULE MAKING

Licensing of Blaster, Crane Operators, Laser Operators and Pyrotechnicians

I.D. No. LAB-45-09-00002-E

Filing No. 1228

Filing Date: 2009-10-26

Effective Date: 2009-10-26

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

Action taken: Addition of Part 61 to Title 12 NYCRR.

Statutory authority: General Business Law, section 483

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

Specific reasons underlying the finding of necessity: These regulations are needed to clarify and standardize the procedures for regulating various occupations which the legislature has found pose special risks to the safety and health of the citizens of New York as well as to their property. There have been several incidents where individuals have been or could have been seriously injured a pyrotechnic displays.

The licensing of pyrotechnicians is a new requirement enacted this year under Section 482 of the General Business Law, by Part CC of Chapter 57 of the Laws of 2009. Every pyrotechnic display conducted in New York on or after October 4, 2009 must have at least one lead pyrotechnician who possesses a certificate of competence issued by

the Department of Labor. These regulations set forth the procedure and requirements for obtaining the certificate.

Subject: Licensing of blaster, crane operators, laser operators and pyrotechnicians.

Purpose: To clarify and standardize the licensing of blasters, crane operators, laser operators and pyrotechnicians.

Substance of emergency rule: The proposed amendment will create a new part to Title 12 – Labor Law of the State Administrative Code. Under this amendment, Part 61 will be added to Subchapter A – Industrial Code. Part 61 provides for general licensing guidelines for crane operators, blasters, and laser operators as well as an entirely new subpart for the licensing of pyrotechnicians. It is the purpose and intent of Part 61, to provide consistent and uniform regulations for these dangerous occupations and to insure that only individuals with proper experience and ability engage in these activities in order to protect the lives, health, and safety of the citizens of the state.

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 January 23, 2010.

Text of rule and any required statements and analyses may be obtained from: Nancy Pepe, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-0288, email: nancy.pepe@labor.state.ny.us

Additional matter required by statute: National Fire Protection Association, 1123 and 1126 Standards on Fireworks Displays and Use of Pyrotechnics Before a Proximate Audience

Regulatory Impact Statement

1. Statutory Authority:

General Business Law Sections 482(1) and 483(1)(a) provide that the Commissioner of Labor is hereby authorized and directed to prescribe such rules and regulations with respect to lasers, crane operators, blasters and pyrotechnicians and that no individual shall operate lasers, cranes or act as a blaster or a pyrotechnician without holding a valid certificate of competence issued by the Commissioner or Labor.

2. Legislative Objectives:

General Business Law Section 480 states that the use of lasers, the operation of cranes, the detonation of explosives, and the preparation and firing of pyrotechnics involves such elements of potential danger to the lives, health and safety of the citizens of this state and to their property that special regulations are necessary to insure that only persons of proper ability and experience shall engage in such operations.

The general provision of this regulation does not supersede and incorporates by reference the current licensing criteria for each of the following occupations: crane operators, General Business Law Section 481.3, 12 NYCRR § 23-8.5; blasters, General Business Law Section 481.4, 12 NYCRR § 39.5; and laser operators, General Business Law Section 481.1., 12 NYCRR § 50.9.

The legislature specified that pyrotechnicians must be certified and directed the Commissioner of Labor to promulgate rules and regulations to administer and enforce the certification requirement.

3. Needs and Benefits:

The Commissioner of Labor recognizes the need for procedures to regulate various occupations which have been designated by the legislature as creating special risks to the safety and health of the citizens of New York as well as to their property. These regulations are needed to clarify and standardize the procedures for regulating the various occupations designated by the legislature as creating special risks to the safety and health of the citizens of New York as well as to their property. There have been several incidents where individuals have been or could have been seriously injured a pyrotechnic displays. The most recent incident occurred during the summer of 2008 when a member of the public was struck by a pyrotechnic shell in the Village of Ticonderoga during an aerial display. By requiring certification only individuals who have demonstrated that they have had training and experience in the field will be allowed to be in charge of these displays.

These emergency regulations clarify that firework displays subject to the permitting requirements of Penal Law Section 405.00 may be conducted by a single certified operator, who shall ensure that a suf-

ficient number of authorized assistants are available for the safe conduct of the fireworks display. Penal Law Section 405.00(3) discusses two operators but makes no provision regarding certification of these individuals. These regulations clarify that at least one certified operator (as defined in the regulation) must conduct the fireworks display with the assistance of a sufficient number of authorized assistants (as defined in the regulation) to ensure the safe conduct of the fireworks display. Penal Law Section 405.00(2) provides that the permit application for a fireworks display must contain a verified statement from the applicant identifying the individuals who are authorized to fire the display, however firing the display is undefined in the statute. These regulations clarify that the firing of the display refers to the actions of the certified operator in issuing a signal to start, or halt, the ignition of fireworks, but does not include the actions of authorized assistants, including shooters, who ignite fireworks in response to such a signal.

4. Costs:

The cost to the certified party will be a one hundred and fifty dollar (\$150) non refundable application fee which will entitle them to be certified for three years. They will also be required to submit to a criminal background check as part of the application process which will cost ninety four dollars and twenty five cents (\$94.25). The total cost will be two hundred and forty four dollars and twenty five cents (\$244.25) every three years.

Additionally, they will be required to demonstrate that they had training in safe handling and firing of pyrotechnic displays. Most employers currently provide this training to their staff on an annual basis.

The other requirement for certification is experience. Applicants will have to be able to demonstrate that they have practical experience by having worked on displays.

The final requirement will be that the applicant passes a written examination demonstrating that they do have the knowledge necessary to properly carry out their duties as a pyrotechnician.

5. Local Government Mandates:

This rule imposes no additional requirements on local governments; certification is the sole responsibility of the Department. Pyrotechnicians must still comply with local laws and obtain applicable permits and variances. For example, the City of New York requires Certificates of Fitness for firework displays (see 3 RCNY Section 113-01(e)(2)(B)).

6. Paperwork:

The paperwork requirements contained in the proposed rule are minimal. The Department will have to develop and complete new documents including application forms and letters to address certification determinations. The Department will also need to develop a data base to process the certificates of compliance.

7. Duplication:

No duplication of rules was identified. Rather, the general provision of this regulation does not supersede and incorporates by reference the current licensing criteria for crane operators, blasters and laser operators. As noted previously, applicants must still comply with local laws and obtain permits and variances in addition to obtaining a state issued license.

8. Alternatives:

The legislation requiring promulgation of the rule provided little room for any alternative to be considered. The amendment specifically requires pyrotechnicians to be certified. The alternatives provided by the Department involve different classifications depending on the applicants training and certification. The regulation requires basic requirements for certification recommended by various stakeholders.

9. Federal Standards:

There are no Federal Standards for pyrotechnic displays.

10. Compliance Schedule:

The statute becomes effective on October 4, 2009. The regulation contains provisions to allow individuals, who can otherwise demonstrate compliance with the requirements for certification, to be certi-

fied without having to sit for the exam. These individuals would have until April 1, 2010 to apply. Anyone applying after that date would be required to take a written exam.

These regulations become effective on August 1, 2009 and provide a procedure and requirements for obtaining a Pyrotechnicians Certificate of Competence. The sections of the regulations requiring such certificate to conduct firework displays are not effective until October 4, 2009, the effective date for the statutory provisions requiring pyrotechnicians to be certified. However, these regulations provide the procedures and requirements for obtaining the Certificate of Competence prior to October 4, 2009.

Regulatory Flexibility Analysis

1. Effect of rule:

These regulations accomplish two purposes. One is to standardize the certification process for the various occupations that the Department is charged with regulating. The second is to adopt specific requirements that relate to the issuance of a Pyrotechnician's Certificate of Competence. The requirement for a Pyrotechnician's Certificate of Competence was enacted by Chapter 57 of the Laws of 2009. These regulations do not impose any new burdens on local governments. All of the requirements for review and issuance of certificates rests with the Department of Labor.

It is expected that the requirement to certify pyrotechnicians may have some economic impact on small businesses. The person in charge of each display will have to be certified by the Department. Currently there are approximately 79 businesses outside of New York City that are involved in pyrotechnic displays. Most of these would qualify as small businesses.

Chapter 57 amended the General Business Law, the Penal Law and the Labor Law. The amendments to the Penal Law now make it possible for pyrotechnic companies to put on "private" displays for things such as weddings etc. Prior to this change only public displays of fireworks were allowed. It is expected that this change will increase the number of shows being done on an annual basis thereby having a positive economic impact on these small businesses.

2. Compliance requirements:

There are no requirements for local governments associated with this rule. Small businesses will be required to hire at least one certified pyrotechnician to be in overall charge of each display.

3. Professional services:

The only required professional services associated with this regulation are those of the pyrotechnician created by the regulation.

4. Compliance costs:

The certifications issued under this regulation are individual occupational certifications. The cost of compliance is borne by the employee not the business or government. It is possible that there may be some positive impact on wages for these licensed individuals but that will remain to be determined by the marketplace.

5. Economic and technological feasibility:

There are no undue economic or technological requirements being imposed by this standard.

6. Minimizing adverse impact:

This rule will have no adverse impact on small businesses or local governments because it is an individual licensing requirement. These regulations provide a procedure for obtaining certification and the requirements for certification. The cost of the license is borne by the employee not the business or the government. The review and issuance of certificates for these individuals is the sole responsibility of the Department. Pyrotechnicians must still comply with local laws and obtain applicable permits and variances.

7. Small businesses and local government participation:

The Department has done extensive outreach with the industry while developing this regulation. It began two years ago with a public forum in Syracuse where members of the industry were invited to discuss reforms to the Departments existing regulations. At the conclusion of the meeting the Department requested that individuals be selected to act as industry representatives. These individuals worked with the Department in developing and revising the existing statutes

and regulations. This is one of the changes developed by that workgroup.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers:

It is expected that the requirement to certify pyrotechnicians may have some economic impact on rural areas. The person in charge of each display will have to be certified by the Department. Currently there are approximately 79 businesses outside of New York City that are involved in pyrotechnic displays. Most of these would qualify as small businesses.

2. Reporting, Recordkeeping and other Compliance Requirements; and Professional Services:

There are no requirements for local governments associated with this rule. Small businesses will be required to hire at least one certified pyrotechnician to be in charge of each display.

3. Costs:

The certifications issued under this regulation are individual occupational certifications. The cost of compliance is borne by the employee not the business or government. It is possible that there may be some positive impact on wages for these licensed individuals.

4. Minimize Adverse Impact:

This rule should have no adverse economic impact on rural areas.

5. Rural Area Participation:

In developing the proposed regulation, the Department sought assistance from the industry, which included rural areas. It began two years ago with a public forum in Syracuse where members of the industry were invited to discuss reforms to the Departments existing regulations. At the conclusion of the meeting the Department requested that individuals be selected to act as industry representatives. These individuals worked with the Department in developing and revising the existing statutes and regulations. This is one of the changes developed by that workgroup.

Job Impact Statement

1. Nature of impact:

The certifications issued under this regulation are individual occupational certificates. It is possible that there may be some positive impact on wages for these licensed individuals. The regulation requires that the person in charge of a pyrotechnic display be certified to ensure that they have the necessary training and experience to properly set up and carry out pyrotechnic displays. This certification requirement was enacted into law by Chapter 57 of the Laws of 2009 and is effective on October 4, 2009.

2. Categories and numbers of jobs or self-employment opportunities affected:

Currently, approximately 79 businesses in New York State are involved in pyrotechnic displays. Some are manufactures, some are display companies and some are a combination of both. These facilities are located across the state in rural areas as well as in proximity to urban area.

3. Regions of the state where there would be a disproportionate adverse impact:

There should be no adverse impact from these regulations; therefore, there will be no disproportionate impact.

Division of the Lottery

EMERGENCY RULE MAKING

Operation of the LOTTO Game and the New York Lottery Subscription Program

I.D. No. LTR-45-09-00001-E

Filing No. 1225

Filing Date: 2009-10-23

Effective Date: 2009-10-23

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

Action taken: Repeal of sections 2804.14 and 2804.15 and Part 2817, and addition of new sections 2804.14 and 2804.15 and Part 2817 to Title 21 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604 and 1612

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

Specific reasons underlying the finding of necessity: Emergency adoption of the new LOTTO regulations is necessary to counteract the budgetary crisis currently facing the State of New York. Governor Paterson discussed the severity of this crisis in his January 7, 2009 State of the State address:

New York faces an historic economic challenge, the gravest in nearly a century. For several months, events have shaken us to the core. Bank closures, job losses and stock market meltdowns have destabilized the foundations of our economy. Since January 2008, two million Americans have lost their jobs. During this recession, an estimated 225,000 New Yorkers will be laid off. Many others have lost their homes. The pillars of Wall Street have crumbled. The global economy is reeling. Trillions of dollars of wealth have vanished.

We still do not know the extent of the economic chaos that awaits us. We do know that this may be the worst economic contraction since the Great Depression. New York entered recession in August. Wall Street was hit the hardest. At least 60,000 jobs will be lost in the financial services sector, which is devastating to our state budget. Financial services provide 20% of state government revenues, so this year's budget will be exceptionally difficult.

Let me be clear - our state faces historic challenges. Our economy is damaged, our confidence is shaken, and the economic obstacles we face seem overwhelming. . . These problems may last for many more months or even years.

Since his State of the State address, the Governor has continued to underscore the importance of reversing New York State's ominous fiscal situation.

The New York Lottery (the "Lottery") has the unique ability to generate revenue for the State quickly and at a critical time when additional revenue is essential. By relaunching a new version of the LOTTO game in September, the Lottery hopes to reverse a downward trend in LOTTO sales and increase revenue earned for education in New York State.

The new regulations allow the Lottery to address the continuing decline in LOTTO sales. Over the course of State Fiscal Years 2004-05 through 2007-08, LOTTO sales have decreased by an average of 10.4% annually. LOTTO sales declined to only \$208,400,000 in the fiscal year ending on March 31, 2008 compared to earlier levels of over \$356,000,000 a year. If the 10.4% annual plunge in LOTTO sales continues through the fiscal year ending March 31, 2012, sales for that year will total only \$134,420,000. The aid to education from this game will also drop from an estimated \$109,858,000 in FY 2007-08 to only \$70,860,000 in FY 2011-12, which is a difference of almost forty million dollars that will need to be subsidized from the General Fund. LOTTO sales even further declined in FY 2008-09 at a rate of 14.6% compared to the previous fiscal year. If this amplified downward trend continues, the consequential decline in aid to education will be even more significant than what is currently projected.

The declining sales of the LOTTO game must be addressed immediately to not only maintain current revenue earned for education, but to hopefully generate additional money for the State. The new game rules are intended to re-ignite interest in the game by providing for a more attractive prize structure with better odds of winning top prizes. Marketing research and consumer surveys indicate that interest in the new LOTTO game is high, which suggests that the State is likely to realize indispensable budgetary relief in the form of increased revenue for education earned through improved LOTTO sales.

In an effort to make the LOTTO game more attractive, the Lottery has further revised the LOTTO game rules to permit multiple variations of the game and to allow flexibility for the Lottery to adjust the game or games based on market trends and research. Such an ability to respond to the player market will also provide the Lottery with the opportunity to increase ticket sales for the LOTTO game or games and ultimately generate more revenue to the State for aid to education.

Due to the unprecedented need for revenue at this time, the Lottery and the State cannot afford to delay relaunch of the LOTTO game until completion of the Notice of Proposed Rulemaking process under the State Administrative Procedure Act. Therefore, the new LOTTO regulations must first be implemented through Emergency Adoption.

Subject: Operation of the LOTTO game and the New York Lottery subscription program.

Purpose: To revise the rules of the LOTTO game and related subscription provisions.

Substance of emergency rule: The repeal and replacement revises the New York Lottery's (the "Lottery's") LOTTO and Lottery Subscription regulations relating to the operation of the LOTTO game. Due to the consistent decline in popularity of the Lottery's flagship game, the Lottery is relaunching LOTTO to make it more appealing to consumers, which should ultimately generate more revenue to the State for aid to education. The revisions to the LOTTO game rules and subscription regulations accommodate the relaunch of the game that is planned for September 2009.

The revised game rules provide for a more attractive prize structure for players and are intended to re-ignite interest in the game. Provisions related to the distribution of prizes provide that the first prize for the game shall be \$1,000,000 paid as a lump sum. Because the game structure will be changed to make odds of winning a first prize more favorable, players will be positively affected since there will be approximately three times as many top prizes as under the existing LOTTO game. The first prize will not be a shared prize unless a certain maximum number of game panels match the applicable numbers for a particular drawing. The revised regulations also address the second prize category through the fourth prize category.

Definitions were revised to accommodate the proposed design while also providing that certain specific game rules shall be publicly announced by the Lottery. The definition of the LOTTO game was revised to permit the Lottery to change the name of the game or to offer two or more versions of the LOTTO game with different fields of numbers and prize structures.

The LOTTO regulations were amended to permit minor changes in the game structure if marketing evidence suggests that alteration may result in greater interest in the game and increased revenue for the State. Specific game details not enumerated within the regulations will be communicated to players via the Lottery's official website, on which the Lottery will designate the odds of winning, the prize structure, including fixed prize amounts, and details about any additional version of the LOTTO game. The Lottery will also announce details regarding LOTTO in advertisements, news releases, play slips, brochures located at retailers, or in any other form that the Director may prescribe. Therefore, slight modifications to the game will not necessarily require amendment of the regulations. This ensures that the Lottery will be able to offer the best possible game, which will appeal to more customers and result in maximum sales and revenue for aid to education in New York State.

The Lottery's regulations relating to subscriptions were also amended to comply with revisions to the LOTTO game. The revised subscription regulations generally describe subscription costs and subscription application requirements. In addition to LOTTO, these regulations apply to any other game that the Lottery has or may have available under the subscription program.

Technical amendments were also made throughout the proposed regulations.

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 January 20, 2010.

Text of rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Associate Attorney, New York Lottery, One Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3493, email: nylrules@lottery.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law, Section 1601, 1604 and 1612, the following official rules shall take effect and shall remain in full force and effect for the New York Lottery's subscription program and the LOTTO game.

Tax Law § 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to carry out the mandate of the State Constitution by establishing a lottery to be operated by the State, the net proceeds of which are to be applied exclusively for aid to education. In order to effectively administer the State-operated lottery authorized by the Constitution and the New York State Lottery for Education Law, Tax Law § 1604 authorizes the Division of the Lottery (the Lottery) "to promulgate rules and regulations governing the establishment and operation thereof." Tax Law § 1612(a)(4) determines the percentages for revenue and prize disposition of LOTTO sales and describes the game as, "'Lotto', offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations."

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Repeal and replacement of these regulations forwards the mission of the Lottery to generate revenue for education by increasing consumer interest in the LOTTO game.

3. Needs and benefits: The Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. Additionally, the LOTTO game is experiencing a decline in sales and a loss of player interest. A comparison of LOTTO sales for 2004-05 to sales for 2007-08 shows an annual decline of 10.4%. For the fiscal year ending on March 31, 2008, sales declined to only \$208,400,000 from earlier levels of over \$356,000,000 a year. If the 10.4% annual plunge in sales continues through the fiscal year ending March 31, 2012, sales for that year will total only \$134,420,000. The aid to education from this game will also drop from an estimated \$109,858,000 in FY 2007-08 to only \$70,860,000 in the fiscal year ending on March 31, 2012.

Repeal and replacement of the LOTTO regulations allows the Lottery to reverse this trend and continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who play lottery games. The revised game rules provide for a more attractive prize structure for players and are intended to re-ignite interest in the game. Because the game structure will be changed to make odds of winning a first prize more favorable, we expect sales to increase since we anticipate three times as many top prizes as under the existing LOTTO game.

Marketing research and consumer surveys indicate that interest in the new LOTTO game is high. Players are motivated by "better odds," and many think the new game that is planned for September 2009 will be a great value. Research reveals that players find the improved odds of winning when compared to the current LOTTO game to be the single most exciting aspect of the new game. Survey participants also responded favorably to first prize being paid as a lump sum. Of those surveyed, 86% prefer jackpot winnings to be paid all at once in cash as opposed to installments. This evidence suggests that New Yorkers are intrigued by the new game, and the State is likely to realize a tangible benefit in the form of increased revenue for education.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this game relaunch. The relaunch of the LOTTO game will generate more revenue for aid to education. More revenue to education from the Lottery will have a positive effect on the State because less funds would then be required from the General Fund to aid education. Furthermore, if less funds are required from the General Fund to aid education, local governments will benefit because increased funding for local schools from Lottery revenues may ease the local tax burden. Local retailers will earn more commissions as the sales of LOTTO tickets increase and may result in more employment opportunities.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. Game information will be issued by the New York Lottery for public convenience on the Lottery's website and through Point of Sale materials at retailer locations.

7. Duplication: None.

8. Alternatives: The revised LOTTO regulations permit minor changes in the game structure if marketing evidence suggests that alteration may result in greater interest in the game and increased revenue for the State. Specific game details not enumerated within the regulations will be communicated to players via the Lottery's official website, on which the Lottery will designate the odds of winning, the prize structure, including fixed prize amounts, and details about any additional version of the LOTTO game. The Lottery will also announce details regarding LOTTO in advertisements, news releases, play slips, point of sale materials located at retailers, or in any other form that the Director may prescribe. Therefore, slight modifications to the game will not necessarily require amendment of the regulations. This ensures that the Lottery will be able to offer the best possible game or games, which will appeal to more customers and result in maximum sales and revenue for aid to education in New York State.

The alternative to amending the LOTTO game is to not address the declining revenues for the game and forfeit the investment already made by the Lottery in the game. As mentioned above, the annual LOTTO sales decline of 10.4% will likely continue, and the State will lose millions of dollars in revenue. The failure to proceed will also result in lost revenue to education that is anticipated to be earned following introduction of a new variation of the LOTTO game.

9. Federal standards: None.

10. Compliance schedule: None.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

This rulemaking does not require a Regulatory Flexibility Analysis or a Rural Area Flexibility Analysis. There will be no adverse impact on rural areas, small business or local governments.

The amendments to the New York Lottery's LOTTO game and subscription regulations will not impose any adverse economic or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Small businesses will not have any additional recordkeeping requirements as a result of the amendments. Additionally, the proposed amendments are anticipated to have a positive affect on the revenue of small businesses that sell lottery tickets as more players will be interested in the game, which will increase sales commissions paid to retailers. Local governments are not regulated by the New York Lottery or its subscription regulations nor are any economic or recordkeeping requirements imposed on local governments as a result of the amendments to such regulations.

Job Impact Statement

The repeal and replacement of 21 NYCRR sections 2804.14 and 2804.15 and Part 2817 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment op-

portunities in New York State. The repeal and replacement of the regulations is sought to relaunch the New York Lottery's LOTTO game to generate more revenue for the State for aid to education.

The revisions may have a positive effect on jobs or employment opportunities as a result of an increase in LOTTO ticket sales, which would increase sales commissions paid to Lottery retailers.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Personalized Recovery-Oriented Services (PROS)

I.D. No. OMH-45-09-00008-P

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

Proposed Action: Amendment of Part 512 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.02; Social Services Law, sections 364-(3) and 364-a(1)

Subject: Personalized Recovery-Oriented Services (PROS).

Purpose: To modify PROS registration, documentation and program standards, and include the methodology for calculating capital add-on.

Substance of proposed rule (Full text is posted at the following State website: www.omh.state.ny.us): This rule will amend Part 512 of Title 14 NYCRR, which established the licensed program category for Personalized Recovery-Oriented Services (PROS) programs. The complete text of the rulemaking is available at www.omh.state.ny.us.

OVERVIEW

The purpose of a PROS program is to assist individuals in their recovery from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where individuals live, learn, work and socialize. Providers are expected to create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery while supporting a harm reduction philosophy.

The PROS regulations adopted in February, 2008, included a stringent registration process, rigorous documentation requirements, and specific programmatic decisions reflecting current clinical practice. Since adoption of the 2008 PROS regulations, OMH has received valuable information through evaluation of operational PROS programs and feedback from PROS providers. Therefore, changes within the PROS regulations are necessary in order to provide an updated, improved mental health delivery system. An overview of the revisions is provided below.

REVISIONS REGARDING REGISTRATION SYSTEM

OMH developed and implemented a PROS registration system that would alert PROS providers and other service providers of potential unauthorized co-enrollment issues. While the PROS registration process accomplished its goal of administering co-enrollment edits via an electronic pre-billing process, it proved to be a complex and costly process for both providers and OMH. Therefore, OMH, in conjunction with the New York State Department of Health, has modified the EMedNY system and the OMH registration system, creating a "real-time" registration process. This change will eliminate certain registration and documentation requirements, thus reducing cost to both PROS providers and to OMH.

REVISIONS REGARDING DOCUMENTATION

When the PROS regulations were adopted, modifications were made which increased the documentation requirements related to reimbursement. OMH has since determined that these requirements resulted in a difficult record keeping process which could reduce the efficient operation of a mental health program. The unfunded operational cost of the documentation requirements created clinical and financial strains on PROS providers. The amended regulations modify the PROS documentation requirements in a manner that is consistent with the requirements of other outpatient programs.

REVISIONS REGARDING GROUP SIZE

In many instances, PROS services are provided in a group format. Current regulations state ratios for groups within Community Rehabilitation and Support (CRS) to be 12 recipients to one staff person and, for Intensive Rehabilitation (IR), eight recipients to one staff person. Providers have the flexibility, on occasion, to include up to 15 individuals in CRS groups and

10 individuals in IR groups. However, the existing regulations limit providers, in these cases, to bill for only 12 individuals in CRS groups and eight individuals in the IR groups. Currently, if more than 15 individuals attend a CRS group or 10 individuals attend an IR group, the regulations do not permit billing for any member of the group. The amended regulations remove the provision that disallows payment for all group members when groups exceed 15 for CRS and 10 for IR. The ratios will be maintained in regulation but will be handled as a certification/clinical practice issue.

REVISIONS REGARDING ONGOING REHABILITATION AND SUPPORT

Ongoing rehabilitation and support (ORS) is a service which is designed to provide ongoing counseling, mentoring, advocacy and support for the purpose of sustaining an individual's role in competitive, integrated employment. Current regulations state that providers may only bill the ORS component add-on for individuals who work in an integrated competitive job for a minimum of 15 hours per week. However, provider feedback indicates that individuals are frequently working 10 hours or more per week, but not the necessary 15 hour minimum. OMH has amended the regulations to reflect a change from 15 hours to 10 hours per week for the minimum required for ORS services.

REVISIONS REGARDING CAPITAL ADD-ON FOR HOSPITAL-BASED PROS

Under the existing regulations, certain hospital-based providers may receive an add-on to their monthly case payment that reflects their capital costs. However, the current regulations do not include the methodology for calculating such add-on funding. The regulations have been modified to include such methodology.

REVISIONS REGARDING COLA

A cost of living adjustment, which increased monthly base rates, as well as rates for intensive rehabilitation and ongoing rehabilitation and support services, was established effective April 1, 2008. That COLA is consistent with the enacted 2008-2009 State Budget and is reflected in this rulemaking.

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

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 (OMH) 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 empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for services approved by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by the OMH such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner of Mental Health authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for services.

Sections 364(3) and 364-a(1) of the Social Services Law give OMH responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. Legislative objectives: Articles 7, 31 and 43 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and establish rates of payments for services under the Medical Assistance program. Sections 364 and 364-a of the Social Services Law reflect the role of the Office of Mental Health regarding Medicaid reimbursed programs. The rulemaking furthers the Legislative intent under Article 7 by ensuring that the Office of Mental Health fulfills its responsibility to assure the development of comprehensive plans, programs and services in the care, treatment, rehabilitation and training of persons with mental illness.

3. Needs and benefits: The Personalized Recovery-Oriented Services (PROS) initiative created a framework to assist individuals and providers in improving both the quality of care and outcomes for people with serious mental illness in New York State.

The PROS regulations adopted in February, 2008, included a stringent

registration process, rigorous documentation requirements, and specific programmatic decisions reflecting current clinical practice. Since that time, OMH has received valuable information through the evaluation of operational PROS programs and feedback from PROS providers. The changes within the PROS regulations are necessary in order to provide an updated, improved mental health delivery system.

One issue that was needed to be addressed was the registration process. OMH had developed and implemented a PROS registration system, the intent of which was to alert PROS providers and other service providers of potential unauthorized co-enrollment issues. While the PROS registration process does accomplish its goal of administering co-enrollment edits via an electronic pre-billing process, it proved to be a complex and costly system for providers and OMH. In some cases, the registration system created delays in processing and limited payment for services within the lower pre-admission payment rate. For example, an individual may have received an entire month of PROS services, yet the provider was reimbursed at a level that did not cover the real costs of rendering those services because of the pre-admission payment rate.

It has become apparent that the three phases of PROS enrollment, each carrying a different set of documentation requirements, added greater complexity and costs to OMH and to PROS providers. In addition, OMH staff must be allocated to operate this system, which is difficult in this time of limited fiscal resources. As a result, OMH, in conjunction with the New York State Department of Health, has modified the EMedNY system and the registration system will be adjusted to serve as a "real-time registration." This change will eliminate certain registration and documentation requirements, thus reducing costs to both PROS providers and OMH.

Another area of concern was the documentation requirements within the regulations. When the PROS regulations were adopted, modifications were made which increased the documentation requirements related to reimbursement. OMH has since determined that these requirements resulted in a difficult recordkeeping process which could potentially be disruptive to the efficient operation of a mental health program. The unfunded operational cost of the documentation requirements created clinical and financial strains on PROS providers.

The amended regulations modify the PROS documentation requirements in a manner that is consistent with the requirements of other outpatient programs. Providers will collect information essential to prove medical necessity for services, provide a road map for an individual's participation in the program, and justify individual monthly PROS bills. The changes, however, will allow providers to complete these critical functions effectively and efficiently in a manner that improves clinical care and fiscal accountability. In addition, the changes will allow providers to develop approaches and documentation practices that fit the intent of their program and integrate with their current practice and electronic record keeping and billing systems.

Revisions were also required to the billing processes for certain groups. In many instances, PROS services are provided in a group format. Current regulations state ratios for groups within Community Rehabilitation and Support (CRS) to be 12 recipients to one staff person and, for Intensive Rehabilitation (IR), eight recipients to one staff person. Providers have the flexibility to, on occasion, include up to 15 individuals in CRS groups and 10 individuals in IR groups. Under existing regulations, providers are limited in these cases to bill for only 12 individuals in CRS groups and eight individuals in IR groups. In addition, current regulations do not permit billing for any member of the group if more than 15 individuals (CRS) or 10 individuals (IR) are in attendance. The amended regulations remove the provision that disallows payment for all group members when groups exceed 15 for CRS and 10 for IR. The ratios will be maintained in regulation but will be handled as a certification/clinical practice issue.

Changes were also needed regarding ongoing rehabilitation and support (ORS) services. The ORS service is designed to provide ongoing counseling, mentoring, advocacy and support for the purpose of sustaining an individual's role in competitive, integrated employment. It is intended to assist individuals in managing symptoms and overcoming functional impairments as they integrated into a competitive workplace. The existing regulations state that providers may bill the ORS component add-on only for individuals who work in an integrated competitive job for a minimum of 15 hours per week. However, feedback from providers had indicated that individuals are frequently working 10 hours or more per week, but not the necessary 15-hour minimum. In an effort to be responsive to current practice, sensitive to the present economy, and respectful of the clinical benefit to individuals, the agency has amended the regulations to reflect a change from 15 hours to 10 hours per week for the minimum required for ORS services.

Modifications were also needed to include a methodology for calculating add-on funding. Under existing regulation, certain hospital-based providers may receive an add-on to their monthly case payment that reflects their capital costs. As the existing regulations do not provide such methodology, the amended regulations have been modified accordingly.

Lastly, a cost of living adjustment, which increased monthly base rates, as well as rates for intensive rehabilitation and ongoing rehabilitation and support services, was established effective April 1, 2008. That COLA is consistent with the enacted 2008-2009 State Budget and is reflected in this rulemaking.

4. Costs:

(a) Cost to regulated persons: The only potential costs to regulated persons would be for the expenditures incurred by the current 21 licensed PROS providers in making the necessary system changes to adapt their electronic medical records and billing systems to comport with the amended regulations. These costs should be offset by the savings that will be generated by the reduced staff time needed to meet the requirements under existing regulations. All new licensees will experience a savings in costs than would have otherwise occurred under the existing regulations.

(b) Cost to State and local government: None expected. Costs to the State may be lessened as a result of staff savings. Additional staff would have been necessary to operate the PROS enrollment system had the registration system not been modified.

5. Local government mandates: The regulation will not mandate any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rulemaking should not result in an increase in paperwork requirements. One of the goals of this rulemaking is to lessen the paperwork burden placed on providers, so ultimately it should result in less paperwork requirements.

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

8. Alternatives: The only alternative would have been to continue with the current PROS regulations in place. As the amendments reflect input from PROS providers and should ultimately result in an improved and more efficient mental health delivery system, that 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 will become effective upon adoption.

Regulatory Flexibility Analysis

The amendments to 14 NYCRR Part 512, Personalized Recovery-Oriented Services, specify new registration processes, documentation requirements and program standards; provide the methodology for calculating capital add-on funding associated with certain hospital providers; and indicate a cost of living adjustment which was effective 4/1/08. This rulemaking will not create an adverse economic impact upon small business or local governments; therefore, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The amendments to 14 NYCRR Part 512, Personalized Recovery-Oriented Services, specify new registration processes, documentation requirements and program standards; provide the methodology for calculating capital add-on funding associated with certain hospital providers; and include a cost of living adjustment, which was effective 4/1/08. This rulemaking will not impose any adverse economic impact upon rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because there will be no adverse impact on jobs and employment opportunities. The rulemaking merely serves to modify registration processes, documentation requirements, and program standards for Personalized Recovery-Oriented Services (PROS) programs. In addition, it provides the methodology for calculating capital add-on funding associated with certain hospitals, and includes a cost of living adjustment, which was effective 4/1/08.

Public Service Commission

NOTICE OF ADOPTION

To Permit the Use of the Eagle MPplus Series Electronic Volume Corrector Product Line

I.D. No. PSC-19-09-00004-A

Filing Date: 2009-10-22

Effective Date: 2009-10-22

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

Action taken: On 10/15/09, the PSC adopted an order approving the petition of Corning Natural Gas Corporation for the Eagle MPplus Series Electronic Volume Corrector product line for commercial and industrial installations in New York State.

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

Subject: To permit the use of the Eagle MPplus Series Electronic Volume Corrector product line.

Purpose: To permit gas utilities in NYS to use the Eagle MPplus Series Electronic Volume Corrector product line.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving the petition of Corning Natural Gas Corporation for the Eagle MPplus Series Electronic Volume Corrector product line, for revenue metering and billing applications for commercial and industrial installations in New York State.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-G-0352SA1)

NOTICE OF ADOPTION

Demand Response Programs

I.D. No. PSC-27-09-00016-A

Filing Date: 2009-10-23

Effective Date: 2009-10-23

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

Action taken: On 10/15/09, the PSC adopted an order approving, with modification, Consolidated Edison Company of New York, Inc.'s Demand Response Programs.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Demand Response Programs.

Purpose: To approve with modifications the Demand Response Programs.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving, with modification, Consolidated Edison Company of New York, Inc.'s (Company) Demand Response Programs (DR), and directed the Company to file compliance tariffs to implement the DR programs, 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.
(09-E-0115SA1)

NOTICE OF ADOPTION

Specific Commercial and Industrial Electric and Gas Energy Efficiency Programs

I.D. No. PSC-32-09-00012-A

Filing Date: 2009-10-23

Effective Date: 2009-10-23

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

Action taken: On 10/15/09, the PSC adopted an order approving, with modifications, electric and gas Energy Efficiency Programs designed to serve the commercial and industrial customer market sector.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Specific commercial and industrial electric and gas energy efficiency programs.

Purpose: To approve with modifications, electric and gas energy efficiency programs.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving, with modifications, selected Energy Efficiency Portfolio Standard (EEPS) electric and natural gas energy efficiency programs designed to serve the commercial and industrial customer market segment. The approved programs are the Mid-size Commercial Business Program (electric) to be administered by Central Hudson Gas & Electric Corporation (Central Hudson); Commercial and Industrial (C&I) Equipment Rebate Program (electric) and Commercial Gas Efficient Equipment Rebate Program (gas) to be administered by Consolidated Edison Company of New York, Inc. (Con Edison); the Commercial Component of the Commercial & Industrial and Multifamily Energy Efficiency Programs (gas) to be administered by The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid (KEDNY/KEDLI); the Energy Initiative Programs (electric and gas) to be administered by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk); the Non-residential Commercial and Industrial Prescriptive Rebate Programs (electric) to be administered by New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation (NYSEG/RG&E); the Commercial Existing Buildings Program (electric) to be administered by Orange and Rockland Utilities, Inc. (O&R); and the Existing Facilities Programs (electric and gas) and FlexTech Program (gas) to be administered by the New York State Energy Research and Development Authority (NYSERDA), 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-1127SA5)

NOTICE OF ADOPTION

Specific Commercial and Industrial Electric and Gas Energy Efficiency Programs

I.D. No. PSC-33-09-00012-A

Filing Date: 2009-10-23

Effective Date: 2009-10-23

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

Action taken: On 10/15/09, the PSC order approving, with modifications, electric and gas Energy Efficiency Programs designed to serve the commercial and industrial customer market sector.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Specific commercial and industrial electric and gas energy efficiency programs.

Purpose: To approve with modifications, electric and gas energy efficiency programs.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving, with modifications, selected Energy Efficiency Portfolio Standard (EEPS) electric and natural gas energy efficiency programs designed to serve the commercial and industrial customer market segment. The approved program is the Non-residential Commercial and Industrial Prescriptive Rebate Programs (electric and gas) to be administered by New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation, 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-1127SA6)

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

Reactive Power

I.D. No. PSC-45-09-00003-P

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

Proposed Action: The Commission is considering a proposed filing by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, PSC No. 19—Electricity.

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

Subject: Reactive Power.

Purpose: To establish reactive power rates and provisions for on-site induction generators.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Rochester Gas and Electric Corporation to establish reactive power rates and provisions for on-site induction generators in compliance with Commission Order issued September 22, 2009 in Case 08-E-0751. The proposed revisions have an effective date of March 1, 2010.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@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-0751SP7)

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

Interconnection of the Networks between Verizon and Wiphonica Technologies for Local Exchange Service and Exchange Access

I.D. No. PSC-45-09-00004-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with Wiphonica Technologies, Inc. executed on September 14, 2009.

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

Subject: Interconnection of the networks between Verizon and Wiphonica Technologies for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Wiphonica Technologies.

Substance of proposed rule: Verizon New York Inc. and Wiphonica Technologies, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Wiphonica Technologies, Inc. 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 networks lasting until September 13, 2011, or as extended.

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

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

(09-01874SP1)

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

Reactive Power

I.D. No. PSC-45-09-00005-P

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

Proposed Action: The Commission is considering a proposed filing by Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, PSC No. 15—Electricity.

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

Subject: Reactive Power.

Purpose: To extend the reactive power rate and provisions to customers operating on-site induction generators.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Central Hudson Gas and Electric Corporation to extend the reactive power rate and provisions to service classes with customers operating on-site induction generators in compliance with Commission Order issued September 22, 2009 in Case 08-E-0751. The proposed revisions have an effective date of March 1, 2010.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@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-0751SP8)

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

Interconnection of the Networks between Newport Tele. Co. and TW Telecom of NY for Local Exchange Service and Exchange Access

I.D. No. PSC-45-09-00006-P

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

Proposed Action: The PSC is considering whether to approve or reject, in

whole or in part, a proposal filed by Newport Telephone Company, Inc. and tw telecom of new york l.p. for approval of a Mutual Traffic Exchange Agreement executed on September 17, 2009.

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

Subject: Interconnection of the networks between Newport Tele. Co. and tw telecom of ny for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Newport Tele. Co. and tw telecom of ny.

Substance of proposed rule: Newport Telephone Company, Inc. and tw telecom of new york l.p. have reached a negotiated agreement whereby Newport Telephone Company, Inc. and tw telecom of new york l.p. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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: Secretary@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.

(09-01875SP1)

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

Transfer a Parcel of Land

I.D. No. PSC-45-09-00007-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Four Seasons Water Corp. for approval to transfer approximately 1.51 acres of land to an adjacent property owner.

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

Subject: Transfer a parcel of land.

Purpose: To approve the transfer of a parcel of land.

Text of proposed rule: On September 29, 2009, Four Seasons Water Corp. filed a petition requesting approval to transfer approximately 1.51 acres of land to an adjacent property owner. Four Seasons currently provides water service to approximately 150 residential customers in the Town of East Fishkill, Dutchess County. The Commission may approve or reject, in whole or in part, or modify the petition.

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: Secretary@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-0734SP1)