

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.

Adirondack Park Agency

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Boathouse and Dock Definitions

I.D. No. APA-44-09-00020-P

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

Proposed Action: Amendment of section 570.3(c) and (j) of Title 9 NYCRR. This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules.

Statutory authority: Adirondack Park Agency Act, Executive Law, art. 27

Subject: Boathouse and Dock definitions.

Purpose: To provide clarity and better environmental protection.

Public hearing(s) will be held at: 6:00 p.m., Jan. 5, 2010 at APA, Ray Brook, NY; 6:00 p.m., Jan. 6, 2010 at Webb Community Center, Old Forge, NY; 11:00 a.m., Jan. 7, 2010 at DEC, 625 Broadway, Rm. 129B, Albany, NY; and 6:00 p.m., Jan. 7, 2010 at Lake George Town Hall, Lake George, NY.

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

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

Text of proposed rule: Subsection (c) of Section 570.3 is proposed to be amended:

Boathouse means a covered structure with direct access to a navigable

body of water which (1) is used only for the storage of boats and associated equipment; (2) does not contain bathroom facilities, sanitary plumbing, or sanitary drains of any kind; (3) does not contain kitchen facilities of any kind; (4) does not contain a heating system of any kind; (5) does not contain beds or sleeping quarters of any kind; and (6) [does not exceed a single story] *has a footprint of 900 square feet or less measured at the exterior walls, a height of fifteen feet or less, and a minimum pitch of four on twelve for all rigid roof surfaces. Height shall be measured from the surface of the floor serving the boat berths to the highest point of the structure.*

Subsection (j) of Section 570.3 is proposed to be amended:

Dock means a floating or fixed structure that: 1) extends *horizontally (parallel with the water surface)* into or over a lake, pond or navigable river or stream from only that portion of the immediate shoreline or boathouse necessary to attach the floating or fixed structure to the shoreline or boathouse; 2) is no more than eight feet in width, or in the case of interconnected structures intended to accommodate multiple watercraft or other authorized use, each element of which is no more than eight feet in width; and 3) is built or used for the purposes of securing and/or loading or unloading water craft and/or for swimming or water recreation. *A structure which is designed to be suspended above water level for storage by means of a hoist or other mechanical device is not a dock.*

Text of proposed rule and any required statements and analyses may be obtained from: John S. Banta, Counsel, NYS Adirondack Park Agency, P.O. Box 99, Ray Brook, NY 12977, (518) 891-4050, email: jsbanta@gw.dec.state.ny.us

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

Public comment will be received until: Five days after the last scheduled public hearing.

Reasoned Justification for Modification of the Rule

The proposed regulations mitigate unintended consequences of definitions for the term “boathouse” and “dock” established effective May 1, 2002.

The APA Act contains a significant exemption from the structure setback requirements for “dock” and “boathouse.”¹ Thus, it is critical to clearly and specifically define those types of structures. Distinguishing these excepted structures from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock. Over the years, many multi-purpose structures have been constructed on the shoreline. Structures purporting to be boathouses have been constructed with second stories dedicated to rooms for sleeping and/or general recreation, and including decks. Plus, some structures purporting to be docks are in reality decks due their size and location. Since a guest cottage, a recreation room, or a greater-than-100-square-foot deck would each be subject to the setback requirements, such structures should not be allowed as part of a boathouse without a variance; that undermines the purposes of the shoreline restrictions and the values they protect.

a) The analysis of what constitutes a “boathouse” has consumed an inordinate amount of Agency staff time. The first definition was adopted in the Agency’s 1982 regulations. That definition required that the structure be used for the storage of boats and boating equipment, prohibited kitchens and baths, and provided it could not be “designed and used for lodging or residency.” Unfortunately, except for the specific prohibition for kitchens and baths, the regulation was impossible to administer due to the lack of clarity in the terms used. Many of the submitted “boathouse” designs included large second story rooms with beautiful finishing and fenestration, which room the landowner insisted was just for the storage of boating equipment. Staff have spent large amounts of time analyzing boathouse plans to assess whether such structures were “designed or used for lodging or residency,” and often significant design changes were required before the plans were acceptable.

The current definition, which took effect on May 1, 2002, limits a

boathouse to use only for the storage of boats and boating equipment, and also to a "single story." The use limitation was an essential component of the definition; it furthers the intent of the shoreline restrictions and ensures that shoreline structures will not be built and used for anything other than what is necessary to be located at the shoreline: the shelter for boats and related equipment. The "single story" limitation was supposed to eliminate the creation of a second story which could be used for a sleeping or recreation room. When drafted, the 2002 definition was based on the New York State Uniform Building Code, which confirms that an attic is not a "story." Thus, the intent was that a boathouse could have storage space above the "ceiling" joists and under the roof rafters, but that space cannot be used for anything other than the storage of boats and associated equipment.

However, the definition did not provide the desired result or the clarity needed. Staff is still required to analyze architectural elements to confirm whether a structure contains only a "single story," based on inclusion of windows, dormers, flooring, doors and stairs associated with the area in the structure above the first floor ceiling joists. Following the May 1, 2002 implementation of the revised definition, guidance regarding application of the "single story" requirement was issued by Agency Counsel and widely distributed to code enforcement officers, building inspectors and any members of the public who requested it, and it was also posted on the Agency's website. The guidance is also complex to administer and it did not eliminate the creation of large, multi-use structures on the shoreline. Moreover, it remains impossible for staff to investigate the actual use of the "attic" area.

The process used to determine whether a structure constitutes a "boathouse" remains unwieldy and unnecessarily complex. The proposed regulation will eliminate the "single story" requirement and will instead provide for a size and height limit, both of which are measurable from the exterior and hence easy to administer. The size limits are necessary to ensure that a second story recreational space is not created. After 35 years of administration of the APA Act, the Agency has concluded that no such space shall be allowed without a variance; the design parameters ensure that the structure is in fact only a boathouse. Note, also, that the size limitation is generally reasonable for most shoreline parcels. The shoreline cutting requirements limit the amount of shoreline vegetation that can be removed. Most shoreline parcels are 100 feet in width and can accommodate at best a 30-foot-wide shoreline structure under the cutting limitations.

The proposed regulation also eliminates the potential for construction of a flat roof on a boathouse.² A flat roof has been allowed under the prior regulatory boathouse definitions. With the 2002 elimination of the potential for construction of a second story, many boathouses were being designed with a large elevated deck with surrounding "safety" railing (or glass enclosures); sometimes with a stone fireplace serving the deck. The elevated deck often significantly exceeds 100 square feet in size; in fact, in some cases they have been well over 1,000 square feet in size. Construction of a deck in excess of 100 square feet in size within the shoreline setback area or over the water would require a variance from the shoreline setback requirements. Construction of a deck to serve as the roof a boathouse evades the setback requirement for the deck and subverts its purpose.³ The proposed regulation will limit the potential for use of the roof as a deck for recreational purposes, as such deck was not intended by the statute to be associated with a boathouse and exempt from the shoreline requirements.

This proposed regulation creates guidelines readily measurable and understood by designers and builders. This reduces the potential for violations associated with construction of a structure that a landowner might allege is a "boathouse," but which does not comply with the Agency definition. The current definition and related Agency guidance has failed to achieve the desired result, and the evaluation of multiple permutations of boathouse designs has continued to occupy an inordinate amount of staff resources. The proposed regulation will clearly delineate the acceptable structural components for a boathouse with the intent that the sole purpose is for boat storage.

b) For many years, staff guidance relative to docks has provided that such a structure cannot exceed eight feet in width; that practice was codified in the regulatory revision which took effect on May 1, 2002 (prior to which time, no definition of "dock" was contained in either the APA Act or its implementing regulations). This action implemented the Task Force recommendation that the Agency codify existing practices.

Since May 1, 2002, the Agency has received inquiries regarding structures which serve as seasonal docks with hoists which allow for suspension of the structure over the water/ice for winter storage. The hoist mechanism uses a tall pole and hydraulics to raise the structure (or its framework) and suspend it at an angle above the water level. The purpose is to eliminate the need for removal and storage of the structure in a different location away from the water to protect it from potential ice damage. The Agency has consistently taken the position that these structures are

not "docks" when suspended above water level and, if they exceed 100 square feet in size, an Agency variance is required for their installation. A large structure as hoisted is highly visible, potentially dangerous, and simply does not serve as a "dock" in that position. Aesthetics is one of the values protected by the shoreline restrictions and that value is impacted by these large structures. The proposed regulation would effectuate this application of the shoreline setback requirements. However, the Agency intends this proposed dock regulation to be prospective only, except that landowners must comply with any outstanding formal jurisdictional determination which provided similar parameters.

¹ The setback requirement for structures in excess of 100 square feet in size range from 50 to 100 feet, depending on the classification of the applicable property on the Adirondack Park Land Use and Development Plan Map. (Note that larger setback requirements apply to the shorelines of rivers designated under the New York State Wild, Scenic and Recreational Rivers System Act.)

² The proposed definition requires rigid roof structures to meet the slope requirement. This is to allow for fabric or plastic roofed structures which may not meet to slope requirement because they are arched in design.

³ There are also noise and lighting issues associated with shoreline decks.

Summary of Regulatory Impact Statement

1. Statutory authority:

The Adirondack Park Agency Act (APA Act), Executive Law Article 27, Section 804(9), authorizes the Agency "to adopt, amend and repeal...such rules and regulations...as it deems necessary to administer this article and to do any and all things necessary or convenient to carry out the purposes and policies of this article...." Similar authority is also found in the NYS Wild, Scenic and Recreational Rivers System Act (ECL Section 15-2709) and in the NYS Freshwater Wetlands Act (ECL Section 24-0801). The statutory and regulatory language addressed in the proposed regulations are: Executive Law Article 27, Section 806(1)(a)(2) which addresses both docks and boathouses; 9 NYCRR Section 570.3(c) boathouse definition and 570.3(j) dock definition; 9 NYCRR Section 577.4(b)(3)(ii) which regulates construction of docks and boathouses within areas designated under the NYS Wild, Scenic and Recreational Rivers System Act. In addition, SAPA Section 207 requires an agency to review on five-year intervals any regulation passed since 1997. The existing boathouse and dock regulations are in that category and the proposed regulations are intended to fulfill that requirement.

2. Legislative objectives:

The shoreline restrictions in Section 806 of the APA Act impose special protections on the shorelines of all Adirondack lakes and ponds and navigable rivers and streams. Section 806 shoreline structure setback requirements only exclude very small structures and "docks" and "boathouses" which of necessity must be on the shoreline. A variance is required to deviate from these requirements. The scientific literature clearly supports the need to minimize shoreline development and preserve natural, undeveloped buffers between development and the water.¹ The proposed regulations mitigate unintended consequences of definitions established effective May 1, 2002.

3. Needs and benefits:

The construction of any structure located within the shoreline setback area or in the water causes an adverse impact to water quality and wildlife habitat, and may also create impacts to the aesthetics of the natural shoreline character, also a matter of importance under the APA Act. Hence, for these reasons, the Agency has determined that the setback requirements must be strictly followed.

The APA Act contains a significant exemption from the structure setback requirements for "dock" and "boathouse."² Thus, it is critical to clearly and specifically define those types of structures. Distinguishing these exempted structures from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock. The proposed boathouse regulation will substitute fixed exterior measurements for the term "single story" to improve consistency and simplify administration of that provision. The proposed regulation also eliminates the potential for construction of a flat roof on a boathouse.³ With the 2002 elimination of the potential for construction of a second story, many boathouses are being designed with a large elevated deck with surrounding "safety" railing (or glass enclosure); sometimes with entertainment amenities like a stone fireplace serving the deck. Construction of a deck to serve as the roof of a boathouse evades the setback requirement and subverts its purpose.⁴

The proposed dock regulation addresses large metal-framed structures which serve as a dock in the summer, but are hoisted into the air and suspended at an angle over the water for winter storage. These structures are prohibited unless they are 100 square feet in size or less, or if a variance is obtained. Lawfully existing dock structures may remain.

4. Costs:

There are no costs associated with the proposed regulations. The construction of a boathouse or a dock is entirely discretionary and a matter of choice. If a landowner chooses to build either structure, he or she must meet the regulatory definition. Both proposed regulations impose size limitations on the structure which could reduce its cost. Moreover, both provide specific performance criteria which will clarify design options. This is an improvement over the repeated submissions which have become the pattern due to the lack of definitive standards in the current definitions. Some landowners will argue that the hoist system for a dock is the only alternative for their shoreline situation. However, this proposed regulation does not preclude the use of a hoist; it just requires that the structure hoisted be no larger than 100 square feet in size, or that a variance be obtained. A 25-foot by 4-foot dock would meet this requirement without a variance.

5. Paperwork:

The proposed regulations should reduce the current pattern of multiple filings with the Agency in order to reach a determination that a boathouse or dock project is non-jurisdictional. This is because of the greater clarity of design requirements in the proposed regulations. In addition, the proposed regulations will not create any new filings or forms.

6. Local government mandates:

The proposed regulations will not impose any new responsibilities on local government entities.

7. Duplication:

The proposed regulations do not duplicate requirements administered by state or local government.

8. Alternatives:

Before adoption of the 2002 amendments, the Agency seriously discussed various size and height limitations. It noted that many municipal laws have height limitations for boathouses. These specific limitations were rejected in favor of the "single story" language. Since the 2002 revision, the Legal Affairs Committee has discussed the issues that have arisen with that new definition, and the Agency determined that the only option to ensure that shoreline structures would be limited to the single purpose of the storage of boats and boating equipment was via size and height limitations. To the extent structures of significant size have been allowed under the old definitions, portions of such structures have routinely been converted and used for purposes other than boat and boat equipment storage.

The Technical Advisory List (TAL) is a multi-disciplinary and multi-interest volunteer group consisting of members of the Task Force on Expediting Adirondack Park Agency Operations and Simplifying its Procedures and representatives of fifteen groups having special and diverse interests in the Adirondacks. The TAL met with the Agency on November 17, 2008 to comment on the proposed regulations which had been circulated to all its members. This broad-based group provided valuable advice and their comments have been taken into consideration when drafting the proposed regulations. For the proposed boathouse regulation, the only significant comment was that the proposed measurement methodology would not work; this prompted a minor change to the proposed regulation. Alternatives reviewed in the course of this dialogue have included different size and height limits and roof pitches. A larger height limit would allow steeper roof pitches, but would also reintroduce the "attic" vs. living space issue.

The proposed regulation should provide clear parameters that can be readily evaluated based on external observations of the resulting structure. Some have argued that a larger footprint size should be allowed for those with significant length of shoreline, to accommodate larger boats, and/or for situations where large estates or shared facilities would require storage of many boats. The proposed regulation would accommodate a one- to three-stall boathouse typical of those found on many Adirondack lakes. Special situations requiring larger boathouses can be accommodated through the variance process. This would provide a permit-style review and approval process where circumstances justify a variance. The proposed regulation would end the practice of allowing flat roofs that can be used as entertainment decks unrelated to the storage of boats. For docks, the proposed regulation is narrowly tailored to address the specific problem of hoisted structures.

9. Federal standards:

The proposed regulations do not involve any federal statutory authority or standards.

10. Compliance schedule:

The proposed regulations will apply prospectively, effective immediately upon approval and filing.

detail the scientific evidence for the protection of natural vegetated buffers along shorelines.

² The setback requirement for structures in excess of 100 square feet in size ranges from 50 to 100 feet, depending on the classification of the applicable property on the Adirondack Park Land Use and Development Plan Map. (Note that larger setback requirements apply to the shorelines of rivers designated under the NYS Wild, Scenic and Recreational Rivers System Act.)

³ The proposed definition requires rigid roof structures to meet the slope requirement. This is to allow for fabric or plastic roofed structures which may not meet to slope requirement because they are arched in design.

⁴ There are also noise and lighting issues associated with shoreline decks.

Regulatory Flexibility Analysis

The APA has determined that the proposed regulatory amendments will not impose reporting, recordkeeping or other compliance requirements on anyone, including small businesses and local governments.¹ A Regulatory Flexibility Analysis is not required pursuant to SAPA Section 202-b(3).

The proposed regulations provide revised requirements for the construction of new boathouses and docks in the Adirondack Park.

As discussed in the RIS, people with shoreline property will continue to build boathouses and docks unabated, even as they comply with the new requirements. The professional services required today to build a boathouse or dock will continue to be needed under the new requirements, but not to any greater degree. The only exception is the potential need for legal counsel if a landowner elects to pursue a request for a variance, but that is an elective choice, and not imposed by the regulation. There are no initial, capital or annual costs imposed by these proposed rules. As discussed in the RIS, the proposed amendments will not have any impact on job opportunities.

The new rules are designed to address regulatory problems that were not solved in the past by outcome or performance standards; it has become necessary to create specific design standards to accomplish the purposes of the shoreline requirements of the APA Act.

¹ Those who wish to replace a lawfully non-conforming structure will have to document the lawful existence of such structure, but that has always been the case since the inception of the APA Act in 1973, and has no relationship to the design requirements for new construction, addressed by the proposed regulations.

Rural Area Flexibility Analysis

The proposed regulations, applicable throughout the Adirondack Park, have the same effect whether the area is considered rural or not, and will create no additional burden for rural areas. (Arguably, the whole of the Park is a rural area.) The proposed regulations impose no reporting, recordkeeping or other compliance requirements on anyone.¹ Therefore, the Adirondack Park Agency has determined that the proposed regulatory amendments will also not impose any reporting, recordkeeping or other compliance requirements on small businesses, rural areas, or on public or private entities in rural areas, and a Rural Area Flexibility Analysis is not required pursuant to SAPA Section 202-bb(4).

The proposed regulations provide revised requirements for the construction of new boathouses and docks in the Adirondack Park. As discussed in the RIS, people with shoreline property will continue to build boathouses and docks unabated, even as they comply with the new requirements. The professional services required today to build a boathouse or dock will continue to be needed under the new requirements, but not to any greater degree. The only exception is the potential need for legal counsel if a landowner elects to pursue a request for a variance, but that is an elective choice, and not imposed by the regulation. There are no initial, capital or annual costs imposed by these proposed rules. As discussed in the RIS, the proposed amendments will not have any impact on job opportunities.

The new rules are designed to address regulatory problems that were not solved in the past by outcome or performance standards; it has become necessary to create specific design standards to accomplish the purposes of the shoreline requirements of the Adirondack Park Agency Act.

¹ Those who wish to replace a lawfully non-conforming structure will have to document the lawful existence of such structure, but that has always been the case since the inception of the APA Act in 1973, and has no relationship to the design requirements for new construction, addressed by the proposed regulations.

Job Impact Statement

A formal job impact analysis is not submitted for these proposed regulatory amendments to the APA regulations because these amendments are not expected to create any substantial adverse impact upon jobs and employment opportunities in the Park. These amendments do not make significant changes to the existing regulations, and will not impact employment opportunities in the Park, as explained below.

¹ The Agency has relied in part on a document entitled Regulatory and Educational Opportunities for Shoreland Protection in the Adirondack Park, dated June 2003, by Sean Conin, PhD., the Agency's former Freshwater Analyst. This comprehensive research paper discusses in

The first proposal changes the definition of “boathouse” by adding a specific height requirement instead of limiting the structure to a “single story.” In addition, the regulation imposes a maximum square footage for the structure, and a minimum roof pitch. While the existing definition does not impose a square footage requirement, other regulations limiting shoreline cutting in effect pose a limitation on boathouse size. This regulation does not preclude the replacement “in kind” of lawfully existing boathouses, and it allows larger structures via the granting of a variance. The size requirement is in line with the size of the vast majority of boathouses constructed, with potential for housing 2-3 motor boats. The regulation is permissive in nature, not prohibitory in that it does not require a landowner to do anything, but rather provides requirements should a landowner choose to pursue a particular development project.

Section 201-a of SAPA defines job impact as a “change in the number of jobs and employment opportunities” attributable to the adoption of the rule. A “substantial adverse impact on jobs” is defined as “a decrease of more than 100 full-time annual jobs and employment opportunities.”

Clearly, there will be no change in employment opportunities of a scale that meets the “substantial adverse impact” test. The changes to the boathouse definition do not preclude the construction of boathouses, but rather only affect their design parameters. Because of the high value of shoreline properties, the demand for boathouse structures will continue unaffected by and in compliance with the regulation, and employment for such construction will continue unabated. The need for architectural and engineering expertise will also remain unaffected, since these experts have generally been necessary for these special structures built to withstand the forces of flowing water and ice, and they will remain necessary. To the extent variances are required for a particular structure, that may increase the employment opportunities for legal counsel.

The change to the definition of “dock” is similar. It does not preclude the construction of docks, but rather affects the method of storage of such structures in the winter. Docks will continue to be built. Replacements “in kind” of lawfully existing structures will continue. Hoisted docking structures will still be allowed, provided the structure does not exceed 100 square feet in size. If there is no other alternative for a particular location, a variance can be granted for a larger hoisted structure.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Detoxification of Substances and Stabilization Services

I.D. No. ASA-49-08-00009-A

Filing No. 1195

Filing Date: 2009-10-15

Effective Date: 2009-11-09

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

Action taken: Repeal of Part 816 and addition of new Part 816 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09, 19.15, 19.40 and 22.09

Subject: Detoxification of substances and stabilization services.

Purpose: To allow statutory implementation of language in Part C Chapter 58 of the Laws of 2008/09 changing from DRG system to per-diem.

Text or summary was published in the December 3, 2008 issue of the Register, I.D. No. ASA-49-08-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Children and Family Services

EMERGENCY RULE MAKING

The Protection of Children in Residential Facilities from Child Abuse and Neglect

I.D. No. CFS-44-09-00001-E

Filing No. 1180

Filing Date: 2009-10-14

Effective Date: 2009-10-14

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

Action taken: Amendment of Parts 166, 180 and 182 of Title 9 NYCRR; and amendment of Parts 433 and 434 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); and L. 2008, ch. 23, section 19

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

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of children in residential care by implementing the provisions of Chapter 323 of the Laws of 2008, which relates to the protection of children in residential facilities from child abuse and neglect.

Subject: The protection of children in residential facilities from child abuse and neglect.

Purpose: To implement chapter 323 of the Laws of 2008.

Substance of emergency rule: Part 433 of Title 18 (Child Abuse and Neglect in Residential Care)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates the scope statement to include the statutory changes and implements the updated statutory definitions. The amendment also updates the obligations and procedures of the Office of Children and Family Services (OCFS), authorized agencies and residential care facilities in conformance with the statutory changes and updates outdated references to the former Department of Social Services.

Sections 434.1, 434.2, and 434.10 of Title 18 (Child Protective Services Administrative Hearing Procedure)

The amendment implements statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard. The amendment also updates outdated references to the former Department of Social Services.

Section 166-1.4 of Title 9 (Prevention and Remediation Procedures)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in OCFS-operated residential facilities in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 180.3 and 180.5 of Title 9 (Juvenile Detention Facilities Regulations)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in juvenile detention facilities in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 182-1.2 and 182-1.12 of Title 9 (Runaway and Homeless Youth Regulations for Approved Runaway Programs)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in runaway and homeless youth programs in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 182-2.2 and 182-2.11 of Title 9 (Runaway and Homeless Youth Regulations for Transitional Independent Living Support Programs)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in runaway and homeless youth programs in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

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 11, 2010.

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

Regulatory Impact Statement

1. Statutory authority:

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

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

Chapter 436 of the Laws of 1997 transferred certain functions, powers, duties and obligations of the former Department of Social Services and all of the functions, powers, duties and obligations of the former Division for Youth to OCFS.

Chapter 323 of the Laws of 2008 amended sections 412, 413, 415, 422, 424-a, 424-b, 424-c and 460-c of the SSL and created sections 412-a and 424-d of the SSL to clarify the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. Section 19 of Chapter 323 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provisions of the Chapter.

2. Legislative objectives:

The regulations implement Chapter 323 of the Laws of 2008 relating to the protection of children in residential facilities from child abuse and neglect. Specifically, the regulations implement the updated statutory definitions and requirements for additional determinations relating to reports of child abuse and maltreatment in residential settings that were enacted in the new sections 412-a and 424-d of the SSL. For example, residential care now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS.

The regulations also implement statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard. In addition, the regulations make technical changes, such as updating outdated references to the former Department of Social Services and the former Division for Youth.

3. Needs and benefits:

The regulations are necessary for OCFS to conform to statutory changes to the SSL relating to the protection of children in residential

facilities from child abuse and neglect. Specifically, the regulations clarify and update the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. For example, residential care now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS. Additionally, the statute and regulations require an immediate law enforcement referral in the event that an investigation reveals that it is likely that a crime may have been committed against a child.

The regulations are also necessary to conform the regulations to the statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard.

The regulations will not apply to incidents that occur before January 17, 2009, which is the effective date of the statutory changes.

4. Costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

5. Local government mandates:

For local governments that operate residential facilities for children, the regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

6. Paperwork:

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

The proposed regulations are required to implement the state law, Chapter 323 of the Laws of 2008. No alternatives were considered.

9. Federal standards:

The regulations and Chapter 323 of the Laws of 2008 are consistent with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA), which does not have special requirements pertaining to children in residential care.

10. Compliance schedule:

Chapter 323 of the Laws of 2008 provides for a January 17, 2009 effective date of the changes set forth in the regulations. For purposes of transition between the former statutory and regulatory provisions and the new law, the effective date will apply to the date when the abuse or neglect was alleged to have occurred. If a report came in on or after January 17, 2009 that involves an incident or incidents that occurred before January 17, 2009, the former definitions of abuse and neglect of children in residential care will apply.

Regulatory Flexibility Analysis

1. Effect on small business and local governments:

The regulations will affect social services districts, voluntary authorized agencies, residential runaway and homeless youth programs and counties that contract for detention programs. There are 58 social services districts, approximately 160 voluntary authorized agencies and 83 residential runaway and homeless youth programs. There are 38 counties plus New York City that contract for detention programs.

2. Reporting, recordkeeping and compliance requirements:

The regulations are necessary to comply with state statutory requirements relating to the protection of children in residential facilities from child abuse and neglect. The regulations reflect the enactment of Chapter 323 of the Laws of 2008, which requires implementation of the statutory changes to be effective January 17, 2009.

Social services districts and voluntary authorized agencies will continue to operate under the current definitions and determination standards for incidents that occurred before January 17, 2009. The regulations reflect the statutory clarification of the definitions of abuse and neglect of a child in residential care and the process used to investigate and respond to such allegations.

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

3. Professional services:

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

4. Compliance costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

5. Economic and technological feasibility:

The social services districts, counties, voluntary authorized agencies and other agencies affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impact. The regulations build on existing procedures.

7. Small business and local government participation:

The regulatory changes make the changes necessary to conform the regulations to the statutory changes made by Chapter 323. In December of 2008, OCFS conducted six regional trainings for voluntary authorized agencies and facilities licensed by OCFS, OMRDD and OMH regarding the changes in state statutory provisions relating to the protection of children in residential facilities from child abuse and neglect. A statewide teleconference was held in November of 2008 regarding the changes in law and that training was recorded so that the training is available to all agencies that were not able to attend one of the regional trainings. A reminder of the statutory changes will be sent to the voluntary agencies in an informational letter in January 2009.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect 44 social services districts that are defined as being rural counties and the seven social services districts that include significant rural areas within their borders. In addition, there are approximately 100 voluntary authorized agencies that service rural communities that will be affected by the regulations.

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

The regulations are necessary to comply with state statutory requirements relating to the protection of children in residential facilities from child abuse and neglect. The regulations reflect the enactment of Chapter 323 of the Laws of 2008, which requires implementation of the statutory changes to be effective January 17, 2009.

Social services districts and voluntary authorized agencies will continue to operate under the current definitions and determination standards for incidents that occurred before January 17, 2009. The regulations reflect the statutory clarification of the definitions of abuse and neglect of a child in residential care and the process used to investigate and respond to such allegations.

The regulations require that a copy of a facility's and licensing state

agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

3. Costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

4. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impact on rural areas. The regulations build on existing procedures.

5. Rural area participation:

The regulatory changes make the changes necessary to conform the regulations to the statutory changes made by Chapter 323. In December 2008, OCFS conducted six regional trainings for voluntary authorized agencies and facilities licensed by OCFS, OMRDD and OMH regarding the changes in state statutory provisions relating to the protection of children in residential facilities from child abuse and neglect. A Statewide teleconference was held in November of 2008 regarding the changes in law and that training was recorded so that the training is available to all agencies that were not able to attend one of the regional trainings. A reminder of the statutory changes will be sent to the voluntary agencies in an informational letter in January 2009.

Job Impact Statement

A full job impact statement has not been prepared for the regulations which contain new requirements imposed by Chapter 323 of the Laws of 2008. The regulations will not have an impact on jobs and employment opportunities because they will not adversely impact the number of staff authorized agencies must maintain to provide residential care for children.

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. 1205

Filing Date: 2009-10-20

Effective Date: 2009-10-20

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 207(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 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 statute becomes effective on July 26, 2009.

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. It is anticipated that the proposed amendment will be adopted as a permanent rule at the November 2009 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the adopted rule can become effective is after its publication in the State Register on December 10, 2009. However, the emergency rule which took effect on July 26, 2009 will expire on October 21, 2009.

Therefore, a second emergency action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the June 2009 Regents meeting, remains 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.

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 include 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; 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 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 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 or any firm that employs such CPA to perform non-attest services pursuant to Education Law section 7406-a.

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 ser-

vices 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 service that may require a licensee to utilize independent judgment. This subdivision does not prohibit the receipt of a payment by a licensee or firm for the purchase of a public accounting practice or retirement payments paid to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates. 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. 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 applicants 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 18, 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; and an additional; (2) \$10 for the sole proprietor or each general partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is New York or who is otherwise authorized to practice in New York through a temporary practice permit. 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.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendment will impose additional costs on the State Education Department to implement new provisions of Education Law.

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 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 pub-

lic 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; and an additional; (2) \$10 for the sole proprietor or each general partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is New York or who is otherwise authorized to practice in New York through a temporary practice permit. 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; and an additional; (2) \$10 for the sole proprietor or each general partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is New York or who is otherwise authorized to practice in New York through a temporary practice permit. 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.

Department of Health

NOTICE OF ADOPTION

PASRR SCREEN Requirements

I.D. No. HLT-28-09-00015-A

Filing No. 1207

Filing Date: 2009-10-20

Effective Date: 2009-11-04

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

Action taken: Amendment of section 400.12 of Title 10 NYCRR.

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

Subject: PASRR SCREEN Requirements.

Purpose: Remove outdated language; revise incorrect language; remove SCREEN from regulation text and replace with reference.

Text or summary was published in the July 15, 2009 issue of the Register, I.D. No. HLT-28-09-00015-P.

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

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

Assessment of Public Comment

The Department received one written comment during the 45-day public comment period on the proposed rule making changes to Section 400.12 of Title 10 New York Codes, Rules and Regulation regarding PASRR SCREEN requirements. The written comment was submitted by the Long Term Care Community Coalition (LTCCC). In their comment, LTCCC expressed its concern that removal of the SCREEN form from the regulation will deprive the public of the opportunity for notice and comment when the form is revised.

"The Long Term Care Community Coalition, a coalition of over two dozen civic, consumer and professional organizations, writes in opposition to one section in the proposed rulemaking I.D. No. HLT-28-09-00015-P.

The proposed regulation, if adopted, will deprive the public of the opportunity for notice and comment when changes are made to New York's screening of individuals for nursing home admission. The current regulation contains the SCREEN form, permitting the public to comment when changes are proposed. By removing the SCREEN form from regulation, the proposed regulation will deprive interested individuals the opportunity to comment. While we understand that the SCREEN is currently being updated and support the effort to conform the form to federal law, we do

not support denying the public an opportunity to comment on these revisions.”

Response:

The Department will continue to accept comments and concerns from the public and any interested party regarding the SCREEN form and will consider this input in evaluating proposed revisions to the form. This process will be facilitated by removal of the form from 10 NYCRR since the need for regulatory revision will be negated. As the regulatory process tends to be quite lengthy, it is anticipated that the proposed rulemaking currently under consideration will expedite processing of future revisions to the SCREEN form. As described in the proposed rule, I.D. No. HLT-28-09-00015-P, the form will be maintained and accessible to all interested parties on the Department’s public website at: <http://www.health.state.ny.us/forms/>.

NOTICE OF ADOPTION

Emergency and Cardiac Services

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

Filing No. 1209

Filing Date: 2009-10-20

Effective Date: 2009-11-04

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

Action taken: Amendment of sections 405.19 and 405.22; and addition of section 405.29 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Emergency and Cardiac Services.

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

Substance of final rule: This amendment to Title 10 of the Official Code of Rules and Regulations of the State of New York amends Section 405.19 by establishing updated minimum standards for Hospital Emergency Services particularly as they relate to patients with Acute Myocardial Infarction (AMI), repeals Subdivisions (d) and (e) of Section 405.22 (Critical Care specific to Cardiac Surgery and Diagnostic Cardiac Catheterization Services), and adds a new section 405.29 establishing updated minimum hospital standards for Cardiac Surgery and Cardiac Catheterization Center Services.

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

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

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

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

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

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

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

Section 405.29(a) provides definitions for adult patient, pediatric patient, Cardiac Surgery Center, Cardiac Catheterization Laboratory Center (including PCI Capable Cardiac Catheterization Laboratory Center,

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

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

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

- Inactivity in a program for a period of 6 months may result in probationary status or withdrawal of approval as a Cardiac Surgery Center and or a Cardiac Catheterization Laboratory Center. 405.29(c)(5)(i)
 - Written notification, including a closure plan acceptable to the Department is required at least 60 days prior to voluntary discontinuance of a Cardiac Surgery Center or Cardiac Catheterization Laboratory Center service. 405.29(c)(5)(ii)
 - Notification to the Department of significant changes in the provision of services is required within 7 days of the change. 405.29(c)(6)
 - As part of Quality Assurance, all Cardiac Catheterization Laboratory Centers located in a hospital with no cardiac surgery on site must enter into and comply with a fully executed written agreement with a New York State Cardiac Surgery Center. The agreement must provide for representatives from the affiliate Cardiac Surgery Center to participate in a broad range of quality of care monitoring at the non-Cardiac Surgery Center; for a telemedicine link between the Cardiac Catheterization Laboratory Center and the Cardiac Surgery Center for off-site review of digital studies and timely treatment consultation; the Cardiac Surgery Center’s involvement in developing privileging criteria; ongoing review of patient selection criteria and implementation of those criteria to include a review of the appropriateness of treatment for a selection of cases; a pre-procedure risk stratification tool that ensures that high risk and or complex cases are treated at a center with cardiac surgery on-site; procedures to provide for appropriate transfer of patients between facilities; and an agreement to jointly sponsor and conduct annual studies of the impact that the Cardiac Catheterization Laboratory Center has on costs and access to cardiac services in the hospital’s service area. 405.29(c)(8)(i)
 - Cardiac Surgery Center reviews conducted by the Department will include review of the quality of services the Center has provided to each of the Cardiac Catheterization Laboratory Centers with which it has a written agreement. 405.29(c)(8)(ii)
 - Cardiac Surgery Centers with one or more affiliate Cardiac Catheterization Laboratory Centers are required to provide professional education designed to update and enhance staff knowledge and familiarity with relevant procedures and technological advances for staff of the off-site center(s). 405.29(c)(8)(iii)
 - Hospitals must have written policies and procedures clearly delineating medical equipment vendor activities in the hospital including restrictions on vendor participation in clinical services. 405.29(c)(8)(9)
 - Cardiac Surgery Centers shall be approved as PCI Capable Cardiac Catheterization Laboratory Centers without a separate CON approval. 405.29(c)(10)
 - Cardiac catheterization services approved prior to July 1, 2009 to perform percutaneous coronary interventions with no cardiac surgery on site may operate as PCI Capable Cardiac Catheterization Laboratory Centers without a CON approval. 405.29(c)(11)
 - Cardiac catheterization services approved prior to July 1, 2009 to perform cardiac electrophysiology procedures may be approved to operate as Cardiac EP Laboratory Programs without a CON approval. 405.29(c)(12)
- Section 405.29(d) sets forth minimum standards specific to Cardiac Surgery Centers including requirements for direction, structure and service requirements, staffing, patient selection criteria and minimum workload standards. Major updates and additions to the existing requirements include:
- 405.29(d)(2)(iii)(c) specifies requirements for post procedure availability of a cardiac surgeon.
 - 405.29(d)(2)(iii)(d) requires written documentation of a triage protocol including identification of specific responsibilities in the event that a patient must be returned on an emergency basis to the operating room.
 - 405.29(d)(2)(iii)(h) requires that the hospital attempt to determine and document the status of each patient at 30 days post operatively

for those who are no longer inpatients and throughout the hospital stay for those who are discharged from the cardiac surgery service to another service within the hospital.

- 405.29(d)(3)(i)(a) requires cardiothoracic surgeons in sufficient numbers to meet the needs of the patients and each of whom performs a minimum of 50 cardiac surgeries a year, with formal review for physicians with annual volumes below minimum volume standards.
- 405.29(d)(3)(iii) specifies that Nurse Practitioners, Advanced Practice Nurses and or Registered Physician Assistants may be utilized when these specialists are appropriately credentialed and privileged on the medical staff.
- 405.29(d)(3)(v) requires a data manager who has special training in the clinical criteria used in the Cardiac Reporting System and who is authorized and shall work in collaboration with the physician director to ensure accurate and timely reporting of data to the Department.
- 405.29(d)(4)(iii) specifies that the hospital shall not admit patients for cardiac surgery under the age of 18 unless the hospital is approved as a Pediatric Cardiac Surgery Center or unless the patient's diagnosis indicates a condition, such as acquired heart disease, that can be most appropriately treated at an adult program with pediatric trained personnel and documentation of consultation with a pediatric cardiologist.
- 405.29(d)(4)(iv) specifies that Pediatric Cardiac Surgery Centers that are not also approved as Adult Cardiac Surgery Centers shall not admit patients over the age of 18 for cardiac surgery unless the procedure will be performed to treat a congenital anomaly and the hospital can meet the additional needs of the patient.
- 405.29(d)(5)(ii) requires a minimum volume of 75 procedures a year for Pediatric Cardiac Surgery Centers, and allows for two or more hospitals to join in a coordinated program, approved by the Commissioner, in which at least one program performs a minimum of 75 cases a year and the total volume for the coordinated program is at least 100 cases a year.

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

- 405.29(e)(1)(vi)(a) specifies that the hospital shall not admit patients under the age of 18 for a cardiac laboratory procedure unless the hospital is approved as a Pediatric Cardiac Catheterization Laboratory Center or unless the patient's diagnosis indicates a condition, such as acquired heart disease, that can be most appropriately treated at an adult program with pediatric trained personnel and pediatric consultative services.
- 405.29(e)(1)(vi)(b) specifies that Pediatric Cardiac Catheterization Laboratory Centers that are not also approved as Adult Cardiac Catheterization Laboratory Centers shall not admit patients over the age of 18 for a cardiac laboratory procedure unless the procedure will be performed to treat a congenital anomaly and the hospital can meet the additional needs of the patient.
- 405.29(e)(1)(vi)(c) specifies that a hospital shall not admit adult patients for PCI unless it is an approved PCI Capable Cardiac Catheterization Laboratory Center.
- 405.29(e)(1)(vi)(d) specifies that a hospital shall not provide cardiac EP laboratory services unless it is an approved Cardiac EP Laboratory Program.
- 405.29(e)(2)(i)(b) specifies that PCI Capable Cardiac Catheterization Laboratory Centers must maintain capability to perform emergency PCI, including but not limited to PCI for the treatment of ST elevation myocardial infarction (STEMI) on a 24/7/365 basis.
- 405.29(e)(2)(ii)(b) requires a minimum of 3 interventional cardiologists at PCI Capable Cardiac Catheterization Centers, each of whom performs a minimum of 75 PCI total cases a year of which at least 11 are emergency PCI cases, with formal review for physicians with volume below minimum volume standards.
- 405.29(e)(2)(ii)(c) requires a data manager at PCI Capable Cardiac Catheterization Centers for reporting of Cardiac Reporting System data to the Department.
- 405.29(e)(2)(iv) specifies a minimum annual volume of 150 PCI cases a year including at least 36 emergency PCI cases at each PCI Capable Cardiac Catheterization Center, and sets forth specific oversight criteria for centers with volume below 400 cases a year, and specifies that minimum volume standards are site specific and cannot be combined with other approved sites for purposes of achieving minimum workload standards.
- 405.29(e)(3) specifies that no new Diagnostic Cardiac Catheterization Services shall be approved and specifies that Diagnostic

Cardiac Catheterization Services are not approved to perform PCI or cardiac surgery.

- 405.29(e)(4)(i) limits Pediatric Cardiac Catheterization Laboratory Centers to hospitals approved as Pediatric Cardiac Surgery Centers.
- 405.29(e)(4)(ii) specifies standards for availability of a pediatric cardiac surgeon during and after any interventional pediatric cardiac catheterization procedure.
- 405.29(e)(5) specifies structure and service requirements, staffing, and patient selection criteria specific to Cardiac EP Laboratory Programs. It limits the types of conditions that can be treated at an EP program with no cardiac surgery on site, and allows for patients between the ages of 12 and 18 to be treated at an EP program with adult, but not pediatric, cardiac surgery on-site when pediatric trained personnel and consultative services are available to meet the needs of the patient.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 405.19(e)(2) and 405.29(d)(3)(iii).

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

Assessment of Public Comment

Sections 405.19 and 405.29 - Emergency and Hospital Cardiac Services

The Department prepared a package of 3 cardiac services regulations and received 6 comments during the public comment period. Three of the comments were general comments concerning all of the regulations. Seton Health, Cayuga Medical Center and a letter coordinated by the Healthcare Association of New York State (HANSY) and signed by several CEOs all support the changes to all 3 of the regulations including the provisions amending Sections 405.19 and 405.29 of the New York Codes Rules and Regulations (NYCRR).

The Department also received comments concerning Sections 405.19, 405.22 and 405.29 from the American Society of Radiologic Technologists (ASRT), the American Heart Association (AHA) and the New York State Society of Physician Assistants (NYSSPA).

ASRT - This association would like all non-physician technical staff involved in the imaging of cardiac procedures to be certified by the American Registry of Radiologic Technologists (ARRT) in radiography, preferably with advanced certification in cardiac-interventional radiography, vascular-interventional radiography or cardiovascular-interventional radiography, or an individual certified by Cardiovascular Credentialing International as a registered invasive cardiovascular specialist.

RESPONSE: The Department uses the ARRT examination as a means of licensure. However, we do not require ARRT certification nor do we require a radiologic technologist to have advanced certification by the ARRT for the imaging of vascular and or interventional procedures. A regulatory change will not be made.

AHA - This association requests:

- Language specific to the hospital's emergency services preparedness for ST Elevation Myocardial Infarction (STEMI) patients indicating that each emergency department should maintain a standardized reperfusion STEMI care pathway that designates primary percutaneous coronary intervention (PCI) as the preferred strategy, or for centers not capable of performing PCI, transfer to a PCI capable cardiac catheterization laboratory center if transfer can be achieved within times consistent with American College of Cardiology/American Heart Association (ACC/AHA) guidelines. Each emergency department should also maintain a standard reperfusion STEMI care pathway that designates fibrinolysis (for eligible patients) as the reperfusion strategy when the system cannot achieve times consistent with ACC/AHA guidelines;
- An additional requirement of a designated PCI Capable Cardiac Catheterization liaison/system coordinator to serve as a single point of contact for all healthcare providers in the STEMI system;
- A requirement that PCI capable cardiac catheterization laboratory centers have a plan in place for simultaneous presentation of STEMI patients;
- The following language regarding data collection and quality improvement measures: "Data as deemed necessary by the Commissioner shall be maintained for cardiac patients treated by the hospital and submitted upon request to the Department of Health in a format specified by the Department such as that maintained by the AHA's and ACC's ACTION Registry - Get with the Guidelines quality improvement initiative";
- Revisions to the minimum PCI and emergency PCI volume require-

ments to be consistent with current ACC/AHA guidelines to continue to reflect current standards of care.

RESPONSE: The suggestions made by the AHA are primarily practice related rather than regulatory requirements. They also ask the Department to accept whatever the current guidelines are in the future before knowing what those guidelines are. Those regulatory changes will not be made.

NYSSPA - This association requests that references to a physician's assistant be changed to physician assistant.

RESPONSE: Those non-substantial changes will be made.

NOTICE OF ADOPTION

Cardiac Services Need Methodology

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

Filing No. 1208

Filing Date: 2009-10-20

Effective Date: 2009-11-04

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

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

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Cardiac Services Need Methodology.

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

Text or summary was published in the July 29, 2009 issue of the Register, I.D. No. HLT-30-09-00021-P.

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

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

Assessment of Public Comment

Section 709.14 - Cardiac Services Need Methodology

The Department prepared a package of 3 cardiac services regulations and received 6 comments during the public comment period. Three of the comments were general comments concerning all of the regulations. Seton Health, Cayuga Medical Center and a letter coordinated by the Healthcare Association of New York State (HANYS) and signed by several CEOs all support the changes to all 3 of the regulations including the provisions amending Section 709.14 of the New York Codes Rules and Regulations (NYCRR).

NOTICE OF ADOPTION

Certificate of Need Process for Cardiac Services

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

Filing No. 1206

Filing Date: 2009-10-20

Effective Date: 2009-11-04

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

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

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

Subject: Certificate of Need Process for Cardiac Services.

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

Text or summary was published in the July 29, 2009 issue of the Register, I.D. No. HLT-30-09-00022-P.

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

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

Assessment of Public Comment

Section 710.1 - Certificate of Need Process for Cardiac Services

The Department prepared a package of 3 cardiac services regulations and received 6 comments during the public comment period. Three of the comments were general comments concerning all of the regulations. Seton Health, Cayuga Medical Center and a letter coordinated by the Healthcare Association of New York State (HANYS) and signed by several CEOs all support the changes to all 3 of the regulations including the provisions amending Section 710.1 of the New York Codes Rules and Regulations (NYCRR).

Higher Education Services Corporation

NOTICE OF ADOPTION

The New York Higher Education Loan Program

I.D. No. ESC-35-09-00008-A

Filing No. 1221

Filing Date: 2009-10-21

Effective Date: 2009-11-04

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

Action taken: Addition of Part 2200-a to Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10), 653 and 655

Subject: The New York Higher Education Loan Program.

Purpose: Implementation of the New York Higher Education Loan Program.

Substance of final rule: The New York State Higher Education Services Corporation (Corporation) proposes to add a new Subchapter D, Part 2200-a to title 8 NYCRR Volume B, Chapter XX. The proposal would implement the New York Higher Education Loan Program (NYHELPS). The following summarizes the proposed regulation by section.

Section 2200-a.1 includes thirty-five definitions applicable to this new subchapter.

Section 2200-a.2 outlines borrower eligibility requirements for student and non-student borrowers. In addition, this section establishes aggregate Program loan limits and sponsor limits. Other eligibility criteria are set forth including ineligibility for borrowers with an adverse credit history and an ability for a borrower or co-signer to obtain renewed eligibility in certain situations.

Section 2200-a.3 outlines school eligibility requirements, including the contribution of a fee by the school, and provides for disqualification from participation for just cause.

Section 2200-a.4 outlines lender eligibility requirements and provides for disqualification from participation for just cause.

Section 2200-a.5 provides due diligence requirements in originating, disbursing, and servicing of Program loans. This section establishes required processes, provides for the proper application of payments and sets forth requirements for the sale or transfer of Program loans.

Section 2200-a.6 sets forth application content required for the Program which includes certain disclosure requirements.

Section 2200-a.7 outlines the fixed rate Program loan portion of the Program. In particular, this section sets forth the process governing the establishment of interest rates, notification of such rates and allocation of fixed rate Program loans.

Section 2200-a.8 outlines the variable rate Program loan portion of the Program including provisions related to the establishment of interest rates.

Section 2200-a.9 provides the minimum and maximum Program loan limits available to eligible borrowers. The amount of the Program loan shall not exceed the difference between the cost of attendance less all other New York State aid, Title IV aid (excluding federal PLUS loans), other federal aid, institutional aid, and private aid, as certified by the eligible college.

Section 2200-a.10 outlines issues involved in the calculation and handling of school default fees and borrower default fees.

Section 2200-a.11 establishes Program loan verification requirements.

Section 2200-a.12 covers prohibited transactions and requirements for lenders and schools pertaining to any unfair or deceptive lending practices for educational loans, any conflicts of interest detrimental to the student, and any other prohibited conduct in connection with student lending.

Section 2200-a.13 sets forth school certification requirements related to eligibility for a Program loan.

Section 2200-a.14 outlines requirements for the processing of Program loan proceeds by schools.

Section 2200-a.15 outlines requirements for the processing of Program loan refunds by schools.

Section 2200-a.16 provides disclosure requirements for participating schools as part of its entrance and exit counseling requirements.

Section 2200-a.17 provides disclosure requirements for participating lenders at the time of Program loan approval and consummation. In addition, this section provides a borrower with the right to cancel a Program loan without penalty in certain circumstances and with the right to make prepayment on Program loan balances without penalty.

Section 2200-a.18 provides reporting requirements for participating schools.

Section 2200-a.19 establishes reporting and retention requirements for participating holders.

Section 2200-a.20 sets forth the terms of Program loan repayment. The repayment period shall begin sixty days after the date the last disbursement is made on the Program loan. Interest shall begin to accrue starting the day of disbursement by the lender to the Corporation. This section provides for in-school deferment, grace period, return to school, repayment terms, minimum payments and an income sensitive repayment option for delinquent Program loans. This section provides for certain forbearances, deferments and Program loan discharges for the death or total and permanent disability of the student. Program loan interest rate reduction and co-signer release options are also established in this section.

Section 2200-a.21 provides due diligence requirements for Program loan delinquency. Holders, or entities servicing Program loans, shall perform required due diligence activities against a borrower and co-signer based on the timeframes and requirements set forth in this section.

Section 2200-a.22 establishes procedures, applicable to holders or entities servicing Program loans, regarding default claims.

Section 2200-a.23 provides for Program loan collection efforts to be set forth in the Program's Default Avoidance and Claim Manual.

Section 2200-a.24 establishes administrative wage garnishment procedures.

Section 2200-a.25 references the Program's Default Avoidance and Claim Manual for the procedures to be followed by holders, or entities servicing Program loans for any borrower filing bankruptcy on a Program loan.

Section 2200-a.26 provides for the annual review and determination by the Corporation of the availability of Program loan consolidations.

Section 2200-a.27 provides for Program audits to be performed on lenders, servicers, holders and eligible schools for Program compliance.

Section 2200-a.28 incorporates certain Program manuals by reference.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2200-a.1, 2200-a.5 and 6, 2200-a.9 and 10, 2200-a.13, 2200-a.16 and 17, 2200-a.20, 2200-a.24 and 2200-a.28.

Text of rule and any required statements and analyses may be obtained from: George M. Kazanjian, NYS Higher Education Services Corporation, 99 Washington Avenue, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.com

Revised Regulatory Impact Statement

A revised regulatory impact statement is not required as there were no substantial revisions to the proposed rule. The revisions to the proposed rule provided clarification and did not materially alter the purpose of the proposed rule. The previously submitted RIS is accurate and the revisions to the proposed rule do not necessitate modification of the RIS.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not required as there were no substantial revisions to the proposed rule. The revisions to the proposed rule provided clarification and did not materially alter the purpose of the proposed rule. The previously submitted RFA is accurate and the revisions to the proposed rule do not necessitate modification of the RFA.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not required as there were no substantial revisions to the proposed rule. The revisions to the proposed rule provided clarification and did not materially alter the purpose of the proposed rule. The previously submitted RAFA is accurate and the revisions to the proposed rule do not necessitate modification of the RAFA.

Revised Job Impact Statement

A revised job impact statement is not required as there were no substantial revisions to the proposed rule. The revisions to the proposed rule provided clarification and did not materially alter the purpose of the proposed rule. The previously submitted JIS is accurate and the revisions to the proposed rule do not necessitate modification of the JIS.

Assessment of Public Comment

HESC received comments following both the September 2, 2009 publication of the 'Notice of Proposed Rulemaking' in the State Register and the September 9, 2009 public hearing, and throughout the public comment period, which ended with the close of business on October 19, 2009. All substantive comments received are considered and discussed in detail at www.hesc.com. A summary is provided below.

Comment: The regulation needs to protect borrowers from undue and burdensome wage garnishment. Federal regulations allow for a garnishment of the lesser of fifteen percent of a borrower's disposable pay or the amount by which a borrower's disposable pay exceeds thirty times the federal minimum wage.

Response: HESC has amended this section to include such a limit, consistent with federal regulations.

Comment: NYHELPS does not have a hardship defense like federal regulations. The regulation should be amended to provide for flexibility in cases where a borrower may need to object to a withholding and claim financial hardship.

Response: HESC has not amended this section to include such a hardship defense, as borrowers are eligible to apply for economic hardship forbearances and other payment modifications in certain instances. Further, the regulation authorizes the hearing officer to consider the borrower's documented financial circumstances, including the overall circumstances of the borrower's household, when deciding the amount of a wage garnishment.

Comment: In order to best protect borrowers, the regulation should establish a reasonable interest rate cap. The current rate cap of twenty-five percent is too high.

Response: HESC has amended the regulation to cap interest rates on loans made under the Program at 16.5 percent.

Comment: The NYHELPS regulation should expressly forbid forbearance fees.

Response: Consistent with regulatory authority, HESC has amended the regulation to forbid the charging of forbearance fees.

Comment: The NYHELPS regulation should allow for unemployment and economic hardship deferments.

Response: Borrower repayment periods are established based on the total amount of loans outstanding, and also consider the average starting salary of a recent New York State graduating student and are designed to be affordable. Borrowers who have not made principal payments while in school are provided a 6 month grace period upon completion of their education, during which no principal payments are due or owing. Given the front end efforts to ensure the affordability of the loan repayment under any circumstances, HESC has not amended this section to extend longer term relief than currently offered in the regulations. The regulation provides for economic hardship forbearances as well as modified payment plans.

Comment: The regulations should allow an option for extended repayments when a student or a borrower uses forbearance or income sensitive repayment option. The regulations should provide for an ability to extend the repayment period especially in some situations such as unemployment.

Response: As a new Program with no prior history, any extension in the repayment period for a few borrowers will add to the costs for all borrowers. HESC seeks to minimize costs to the maximum number of New York State students and families.

Comment: The NYHELPS regulation should bring discharges for death and permanent total disability in line with the federal law/regulations by allowing for death and disability discharge at any point within the repayment period. Currently, under NYHELPS, death and disability discharge only extends to enrolled students. Borrowers should be covered for the life of the loan.

Response: As a new Program with no prior history, the terms that are currently in place allow HESC to maximize the number of constituents served. As the Program becomes established with a history of success, it is anticipated that additional allowances that benefit all borrowers will follow.

Comment: NYHELPS regulation will harm low income New Yorkers who receive a loan and later become disabled or have difficulty finding employment.

Response: New York has a history of providing needs-based financial aid to low income New Yorkers. As a new Program with no prior history, the terms that are currently in place allow HESC to maximize the number of constituents served. As the Program becomes established with a history of success, it is anticipated that additional allowances that benefit all borrowers will follow.

Comment: NYHELPS loan repayment and cancellation options do not mirror the federal student loan program and that borrower protections will be provided in the regulation.

Response: Unlike the federal student loan program, NYHELPS is designed to take a relatively small pool of available funds and lend it to as many constituents as possible at a favorable interest rate. The terms that are currently in place allows for the establishment of a Program that maximizes the number of constituents served.

Comment: The NYHELPS regulation should allow students to rehabilitate defaulted loans as is provided for in federal programs.

Response: Unlike the federal student loan program, NYHELPS is designed to take a relatively small pool of available funds and lend it to as many New York State constituents as possible at a favorable interest rate. At this time, the use of funds for loan rehabilitation would diminish the number of new loans that could be made to students.

Comment: NYHELPS provides limited forbearance and income sensitive payment options and none of these options extend the terms of the loan. Other public loan programs offer a wider array of consumer protections to borrowers including loan rehabilitation and flexible payment options.

Response: As a new Program with no prior history, the terms that are currently in place allow HESC to maximize the number of constituents served. As the Program becomes established with a history of success, it is anticipated that additional allowances that benefit all borrowers will follow.

Comment: Federal programs provide for closed school, false certification and unpaid refund discharge of student loans. NYHELPS should offer school based loan discharge as is provided for in the federal programs.

Response: The Program restricts school eligibility to expressly address concerns regarding traditionally predatory schools. Education Law § 690(3) defines "eligible college".

Comment: Structure of NYHELPS has a built-in problem with conflict of interest between the bond issuers and investors and borrowers. Funding a state-sponsored student loan program with annual bond issues carries a high risk of unfriendly loan terms. NYHELPS should provide for a more equitable balance between borrowers and investors.

Response: There are more provisions that are in line with federal law than not. Where differences do exist, they are the result of differences in the newness of the program as well as how the programs are financed. As a new Program with no prior history, HESC has implemented the maximum protections that will allow for a Program that utilizes a relatively small pool of funds to lend to as many constituents as possible at a favorable interest rate. As the Program becomes established with a history of success, it is anticipated that additional allowances that benefit all borrowers will follow.

Comment: Proposed regulations heavily influenced by HESC's efforts to court the bond rating agencies. The few consumer protections

in the regulation are subject to the approval of the public benefit corporation.

Response: NYHELPS offers New York students and families the only currently available fixed-rate private education loan. Maximum flexibility is needed to build a Program that will serve the maximum number of constituents utilizing the limited available funding. As a new Program with no prior history, HESC has implemented the maximum protections that will allow for a Program that utilizes a relatively small pool of funds to lend to as many constituents as possible at a favorable interest rate. Details concerning credit criteria are specified in the Program Underwriting Manual. The interest rate can not be established until the bonds have been sold and will be published on HESC's web site.

Comment: Concern that regulatory protections may be undone and are subject to approval by the public benefit corporation.

Response: NYHELPS is designed to offer students and families an affordable alternative option to a variable rate private education loan. Measures will continue to be taken to maximize the benefits available to borrowers as the Program builds a history of success.

Comment: HESC is urged to ensure that the proposed low-cost loan program becomes a reality for eligible New York State residents as such a program would benefit an enormous number of students.

Response: HESC is working to construct a Program that will provide the lowest fixed-rate interest rates for students and families in need of a private education loan.

Comment: The regulation would limit eligibility to co-sign to no more than three loans per academic year unless there is a parental relationship. HESC should include language allowing the three-loan limit to be waived in compelling circumstances.

Response: As a new Program with no prior history, the terms that are currently in place allow HESC to maximize the number of constituents served at a favorable interest rate. Expanding the loan limit, even in such compelling circumstances, poses a risk to loan recovery that would compromise this objective. As the Program becomes established with a history of success, it is anticipated that additional allowance that benefit all borrowers will follow.

Comment: Concerns raised regarding the cosigner requirement for those students that are independent students, perhaps exceptions should be made.

Response: Cosigners are necessary to ensure the lowest interest rates for all students. The Program is designed to take a relatively small pool of available funds and lend it to as many constituents as possible at a favorable interest rate.

Comment: Concern raised regarding the expected volume of student participation and level of advertising will be done. Concern that students who do not otherwise take out traditional loans will see the advertisements and apply.

Response: All public information regarding NYHELPS informs borrowers that they must first apply for and exhaust all available state, institutional and federal aid, excluding PLUS. Additionally, an eligible school must certify a student's remaining need prior to disbursement of a Program loan. Information on PLUS loans are also made available through the sole application portal, Marketplace; and students must complete a financial literacy education course prior to receiving a NYHELPS loan.

Comment: Hope expressed that HESC can get a low fixed interest rate. Regulations should spell out when the fixed rate will be established.

Response: HESC is working to construct a Program that will provide the lowest fixed-rate interest rates for New York students and families in need of a private education loan to support their college costs. The regulation provides that the fixed interest rate will be set upon the sale of bonds and will be posted on HESC's web site.

Comment: Regulations should make it clear that excess payments by a borrower be applied to principal rather than simply "future installments."

Response: HESC has clarified the regulation.

Comment: Amend regulation to require that lender give notice to

borrower of borrower's ineligibility before cancelling remaining disbursements.

Response: HESC has amended § 2200-a.17(e)(ii) to require that a lender provide notice to a borrower of such borrower's ineligibility prior to cancelling any remaining disbursements.

Comment: Specify the required number of consecutive on-time payments before co-signer may be released.

Response: The regulation provides for an annual process that will determine the specific number of payments required for a co-signer release.

Comment: In the Claim Manual, HESC should give notice by the last known e-mail address as well as by mail.

Response: NYHELPS provides for the use of electronic means including e-mails to satisfy due diligence requirements.

Comment: NYHELPS should require disclosure of the federal PLUS loan program availability to potential borrowers.

Response: Public information on NYHELPS, and the financial literacy component, will inform borrowers about the availability of PLUS loans as well as all other State and federal grants and loans. Throughout Marketplace, borrowers are encouraged to research their eligibility for a federal PLUS loan prior to selecting any private loan product.

Comment: The Regulation should require those private education loan disclosures called for in the 'Truth in Lending Act'.

Response: The regulation requires compliance with all State and Federal consumer lending laws, rules and regulations.

Housing Finance Agency

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Agency's Qualified Allocation Plan ("Plan")

I.D. No. HFA-44-09-00002-P

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

Proposed Action: Amendment of Part 2188 of Title 21 NYCRR.

Statutory authority: 26 U.S.C., section 42; Public Law, 110-289; title I of the U.S. Housing Act of 1937

Subject: Agency's Qualified Allocation Plan ("Plan").

Purpose: To amend the Agency's Plan to comply with the requirements of the Housing and Economic Recovery Act of 2008 (Public Law 110-289).

Public hearing(s) will be held at: 5:30 p.m., Dec. 28, 2009 at 641 Lexington Ave, New York, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.nyhomes.org): Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations, Revenue Rulings and Procedures, and other publications of the Internal Revenue Service with binding authority applicable thereunder (collectively, the "Code") require each agency that allows Low Income Housing Tax Credits ("LIHTCs") to adopt a Qualified Allocation Plan ("QAP"). The New York State Housing Finance Agency's (the "Agency") QAP currently applies to the Agency's allocation of LIHTC, as a sub-allocating agency under Executive Order No. 135, issued by Governor Cuomo on February 27, 1990 and continued by Governor Spitzer's Executive Order No. 5, issued January 1, 2007 and Governor Paterson's Executive Order No. 1, and by Part 2040 of Title 9 of the New York Official Compilation of Codes, Rules and Regulations. Under these rules, the Agency has the authority to create, modify and administer its own QAP in order to further the Agency's purpose and mission.

The Housing and Economic Recovery Act of 2008 ("HERA") (Public

Law 110-289) was enacted on July 30, 2008. This law calls for changes in the agency's QAP, specifically in the areas of selection and monitoring process. Additionally, the enactment of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and the possibility of similar initiatives in the future require a modification of the QAP to allow the Agency to respond to such initiatives as appropriate. The Agency opted to further modify its threshold criteria and application process in order to comply with state policies and create a more efficient application process.

HERA requires the implementation of two new selection criteria for all allocations of LIHTCs after December 31, 2008, one regarding exceeding required energy efficiency standards and the other regarding preservation of the historic nature of projects. HERA also requires that LIHTC projects which are in a "State Designated Building" receive the same increase in eligible basis as those projects located in Difficult to Develop Areas. LIHTC projects must also supply information to the Agency which meets the Agency's reporting requirements under HERA's tenant data collection provisions. Income re-certifications in 100% low-income LIHTC projects must be waived. Accordingly, the Agency proposes to amend its current QAP to comply with these aforementioned HERA requirements.

The Agency is also proposing to amend the QAP to allow the Agency the flexibility to respond to the emergence of federal or state housing initiatives. The proposed change would allow the Agency to apply the QAP in the administration of such programs as is necessary and appropriate.

Additionally, the Agency is proposing amendments to the QAP to make it conform to the Agency's current tax exempt bond financing process by eliminating references to two application phases. Also, the Agency is proposing that projects must meet the Agency's "Mandatory Green Building Guidelines" as a threshold criterion.

The proposed amendments are set forth in a proposed 2188.1(d); 2188.2(ee); 2188.4(e)(4)(iii); 2188.5(q); Section 2188.6(c)(5) and 2188.6(c)(6); 2188.7(e)(1)(ix); 2188.7(h); and 2188.8(b):

2188.1 Introduction.

(d) The Agency may also be involved with other programs or projects pursuant to this QAP in accordance with federal or state mandates.

2188.2 Definitions.

(e) "State Designated Building"-a building, receiving LIHTC subject to the State Credit Ceiling, that is so designated by the Members as requiring an increase in credit as if the building were part of a qualified low-income housing project located in a difficult development area in order for such building to be financially feasible.

2188.4 HFA Allocation Process.

(e)(4)(iii) The Members may designate a building or buildings in a State Credit Ceiling LIHTC project as a State Designated Building eligible for a credit increase as if the building was located in a difficult to develop area if the Members find, based on the facts and circumstances pertaining to the building or buildings, that such a designation is necessary for the financial feasibility of the building and find that such a designation will promote one or more of the State's housing priorities as stated in § 2188.3 of this Plan or any other statement of housing policy from the Agency or the State.

2188.5 Threshold Eligibility Requirements for LIHTC Allocation.

(q) Effective with applications received after 1/1/09, the project's design and construction complies with the Agency's minimum standards for energy efficiency and sustainable development appropriate for the type of building and occupancy proposed as described in the Agency's currently effective published policies for energy efficiency and sustainable development (commonly known as the Agency's "Green" guidelines).

2188.6(c) Project Characteristics (maximum of 15 points).

(5) The project's design, engineering, and proposed operations will result in a more energy efficient project than required by the applicable building codes; other applicable laws, ordinances or regulations and the Agency's policies on energy efficiency and sustainable development.

(6) The project includes the preservation and/or adaptive reuse of the historic nature of the project's existing structure, structures or site, for example, by including the rehabilitation of certified historic structures.

2188.7(e)(1) Recordkeeping.

The Regulatory Agreement shall provide that the owner of the project is required to keep records for each building with respect to which LIHTC has been allocated or allowed that show for each year in the "compliance period" (as defined in Code Section 42[I][1]):

(ix) In a format acceptable to the Agency, the data elements specified by the Agency that are necessary for the Agency to meet its reporting requirements under Section 36, Collection of Information on Tenants in Tax Credit Projects, of Title 1 of the United States Housing Act of 1937;

2188.7 Procedures for Monitoring of Projects.

(h) Waiver of Annual Tenant Income Recertification Requirement. Annual tenant income certifications requirements are waived for any project where all the tenants are income qualified for any year if during such year no residential unit in the project is occupied by a new resident whose

income exceeds the applicable income limit. The Agency reserves the right, at its discretion, to continue requiring annual income recertifications, or to reinstate annual recertification requirements.

2188.8 Miscellaneous Provisions.

(b) No Recourse or Reliance. No provision of this QAP shall be the basis for any claim against the Agency or any Member, officer or employee of the Agency. The QAP may be amended at any time, and such amendment may be prospective or retroactive. The QAP may also be applied as necessary and convenient in response to federal or state mandates.

Several sections of the QAP such as § 2188.2(b), (y), and (z), § 2188.4(d), (e) and (f) were amended to exclude references to the two phase application process. Additionally, other sections of the QAP have been amended to apply all of the provisions listed above. To view the amendments to the QAP in their entirety, a PDF document is available at the Agencies website.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Associate Counsel, New York State Housing Finance Agency, 641 Lexington Avenue, New York, New York 10022, (212) 872-0365, email: jticker@nyhomes.org

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

The proposed amendments relate to the Qualified Allocation Plan ("Plan") of the New York State Housing Finance Agency ("Agency"). The Plan pertains to the allocation of federal low-income housing tax credit ("LIHTC") by the Agency under § 42 of the Internal Revenue Code ("Code"). Pursuant to § 44(16) of the Private Housing Finance Law, the Agency is authorized to accept aid in any form from the federal government or any agency or instrumentality thereof and to comply with the terms and conditions thereof. The Agency serves as a sub-allocating housing credit agency with respect to such LIHTCs pursuant to Executive Order No. 135 issued by Governor Cuomo on February 27, 1990, which has been continued by Governor Spitzer's Executive Order No. 5 issued on January 1, 2007 and further continued by Governor Paterson's Executive Order No. 1, issued March 20, 2008 and by Part 2040 of Title 9 of the New York Official Compilation of Codes, Rules and Regulations. For an allocation of LIHTCs to be valid under § 42(m) of the Code, such allocation must be made pursuant to a qualified allocation plan that satisfies certain selection and other criteria set forth in § 42(m) of the Code, and that is approved in accordance with rules similar to those set forth under § 147(f)(2) of the Code. As such, the Plan constitutes a rule under § 102(2)(a) of the New York State Administrative Procedures Act, pursuant to which the Agency's Plan has been codified in 21 NYCRR Part 2188.

Pursuant to § 42(m)(1)(B)(i) of the Code, the Agency has discretion to develop and modify its Plan so that it sets forth selection criteria reflecting such housing priorities as the Agency determines are appropriate to local conditions. Additionally, the enactment of Public Law 110-289 (the Housing and Economic Recovery Act of 2008) ("HERA") has resulted in revisions to § 42 of the Code, as well as Title I of the U.S. Housing Act of 1937. In order to comply with certain aspects of these revisions, specifically those made to § 42(m)(1), § 42(d)(5), § 42(g)(8), and Title I of the U.S. Housing Act of 1937, the Agency must modify its Plan accordingly.

2. Legislative objectives

The proposed revisions will amend the Plan in order to comply with HERA and create a more efficient application review process. These amendments will ensure that the Agency promotes quality affordable housing in compliance with federal laws and state policies. The Agency is proposing to add a threshold criterion which will require projects to meet the Agency's "Mandatory Green Building Guidelines". This provision reflects similar state policies and the Agency's intent to provide housing in an environmentally sustainable manner. The proposed change in the Agency's application process will allow the Agency to complete its reviews of projects more efficiently. The amendments regarding adding selection criteria for energy efficiency and preservation of the "historic nature" of projects, creating a category of "State Designated Buildings" entitled to a boost in eligible basis, requiring the collection of certain tenant information from LIHTC project owners, and waiving income recertification requirements with respect to 100% low-income LIHTC projects, will allow the Agency to be in compliance with applicable federal rules and regulations.

The enactment of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and other such similar initiatives may require the Agency to participate in administration of certain new housing initiatives related to the LIHTC program in a manner consistent with its QAP. Accordingly, the amendments regarding Agency participation in programs pursuant to federal or state mandates will provide the Agency the flexibility necessary and convenient to comply with such mandates without necessitating further changes to the Agency's QAP.

3. Needs and benefits

The proposed amendments are required to comply with certain requirements of HERA and other similar initiatives. The proposed amendments will also ensure compatibility with federal laws and state policies, as well as increase efficiency with which the State of New York participates in the federal LIHTC program.

4. Costs

There are no substantial costs associated with the adoption of or compliance with the proposed amendments. Due to the fact that there will be no substantial additional costs to any of the parties involved, no cost analysis is necessary.

a. Costs to regulated parties for implementation of and continuing compliance with the rule.

The proposed amendments will not impose any substantial additional costs on those parties who are LIHTC participants. The Agency currently expects projects to comply with the Agency's policies for energy efficiency and sustainable development. Additionally, due to local building codes and standard building practices, projects regulated by the Plan typically satisfy the Agency's "Mandatory Green Building Guidelines" and therefore the cost of development should remain substantially unchanged. Additionally, the Agency does not anticipate any increase in fees or reporting costs.

b. Costs to the Agency; the state and local governments for the implementation and continuation of the rule.

There are no substantial costs associated with the adoption of the amended regulations.

c. The information, including the source(s) of such information and methodology upon which the cost analysis is based.

Since there will be no substantial cost to any party involved, no such analysis is necessary.

d. Where an agency finds that it cannot fully provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost estimate cannot be provided.

Not applicable because there will be no substantial costs to any party involved in the procedures to be implemented under the proposed rule.

5. Local government mandates

The amended regulations do not impose any service, duty or responsibility upon any county, city, town, school district, fire district, or other special district.

6. Paperwork

HUD has not yet formulated its tenant reporting requirements (which are mandated pursuant to HERA), but it is the Agency's goal to incorporate this information into standard reports already utilized by participants, and therefore no significant change or increase in paperwork is anticipated. Similarly, the other amendments to the Plan require only minimal changes to existing documents.

7. Duplication

There are no other relevant rules or other legal requirements of the state or federal governments that may duplicate, overlap, or conflict with the proposed rule.

8. Alternatives

There is no alternative as HERA mandates that each housing credit agency comply with these requirements. No significant alternatives were considered for amendments not required by HERA.

9. Federal standards

These amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule

The proposed amendments will take effect as soon as possible under applicable law. Projects regulated by these amendments will not need any amount of time to achieve compliance with these rules.

Regulatory Flexibility Analysis

1. Effect of rule

The proposed amendments will have no significant effect on small businesses or local governments. The proposed amendments consist of modifications in the Qualified Allocation Plan ("Plan") of the New York State Housing Finance Agency ("Agency"). The Plan pertains to the allocation of federal low-income housing tax credit ("LIHTC") under § 42 of the Internal Revenue Code. The Agency's Plan has been codified in 21 NYCRR Part 2188. The proposed amendments are necessary and appropriate to implement the requirements of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) and to allow the Agency to comply with the mandates and requirements of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and similar initiatives. Under the proposed rule, small businesses that are involved in the financing or administration of such projects will have new selection criteria, amended reporting requirements, and will participate in a more efficient application process. Local governments will not be affected by the proposed rule.

2. Compliance requirements

The proposed amendments will alter reporting requirements. In order to meet the threshold criteria, participating small businesses and local governments will need to submit evidence that their projects meet certain energy efficiency standards. The Agency currently expects its participants to adhere to these standards based on current applicable building codes and normal building practices. Evidencing compliance will require a nominal amount of documentation. The amendments will also require participants to submit additional tenant information. However, the Department of Housing and Urban Development (HUD) must establish standards and definitions for the information to be collected. It is anticipated that this will only require a nominal amount of work and documentation above what the Agency currently requires.

3. Professional services

Compliance with the proposed amendments will not require any substantial change with respect to those professional services, if any, that small businesses and local governments may need in relation to LIHTCs for the types of projects to which the Plan pertains.

4. Compliance costs

In order to meet the threshold criteria, participating small businesses will need to submit evidence that their projects meet certain energy efficiency standards. The Agency currently expects its participants to adhere to these standards based on currently applicable building codes and normal building practices, so there should be no increase in capital costs to the participants. The amendments will also require participants to submit additional tenant information, but the Department of Housing and Urban Development (HUD) must establish standards and definitions for the information to be collected. Though this may affect the developers that are small businesses, the amount of costs associated with the documentation above what the Agency currently requires will be nominal.

5. Economic and technological feasibility

There are no special economic or technological requirements for small businesses or local governments for compliance with the proposed amendments. The proposed amendments do not substantially increase or change the need for economic or technical services, nor do they change the types of economic or technological services necessary.

6. Minimizing adverse impact

There will be no adverse impact by the proposed amendments.

7. Small business and local government participation

The Agency will publish a general notice of the proposed amendments to its Plan. The Agency does not anticipate that the proposed amendments to its Plan will have any substantial direct effect on the interests of small business and local government. To provide any interested parties, including small business and local government, with notice of the proposed amendments in addition to that provided by publication in the State Register, and to minimize costs of participation in the rule making process, the Agency will post and solicit comments on the proposed amendments on its website. Copies of the amended regulations will be available upon request in both hard copy and electronic format. The Agency shall respond in a timely manner to any written requests, comments, and questions about the proposed rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed amendments to the Qualified Allocation Plan ("Plan") of the New York State Housing Finance Agency ("Agency") do not apply specifically to any rural area. The Plan pertains to the allocation of federal low-income housing tax credits by the Agency under § 42(m) of the Internal Revenue Code. The proposed amendments are required to implement the requirements of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) ("HERA") and allow the Agency to comply with the mandates and requirements of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and similar initiatives, and to ensure a more efficient application process. The Agency's Plan has been codified in 21 NYCRR Part 2188.

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

There are no substantial reporting, recordkeeping, or other compliance requirements or professional services needed to comply with the proposed amendments to the Agency's Plan specifically in a rural area. In order to meet the threshold criteria, all participants, regardless of area classification, will need to submit evidence that their projects meet certain energy efficiency standards. The Agency currently expects all participants to adhere to these energy efficiency standards based on currently applicable building codes and normal building practices. Evidencing compliance will require a nominal amount of documentation. The amendments will also require all participants, regardless of area classification, to submit additional tenant information. However, the Department of Housing and Urban Development (HUD) must establish standards and definitions for the information to be collected. It is anticipated that this will only require a nominal amount of work and documentation above what the Agency

currently requires. With respect to any party that wishes to apply for federal low-income housing tax credits pursuant to the Agency's Plan, the proposed amendments do not substantially increase or change the otherwise necessary reporting, recordkeeping, or other compliance or professional services requirements. The Agency does not anticipate any variation in the otherwise necessary reporting, recordkeeping, or other compliance or professional services requirements with respect to entities in rural areas.

3. Costs

The amendments will have little impact on cost compared to the rules that are already in effect. In order to meet the threshold criteria, all participants, regardless of area classification, will need to submit evidence that their projects meet certain energy efficiency standards. The Agency currently expects all participants to adhere to these energy efficiency standards based on currently applicable building codes and normal building practices, and therefore no significant increase in capital costs is anticipated, regardless of location. The amendments will also require all participants, regardless of area classification, to submit additional tenant information. The Agency does not anticipate this additional information to generate any significant cost. All other proposed amendments will result in nominal costs for the projects. The Agency does not anticipate any variation in such costs, if any, with respect to entities in rural areas.

4. Minimizing adverse impact

There will be no adverse impact on rural areas from these amendments. The Agency has considered the approaches suggested under SAPA § 202-bb(2) as well as similar approaches, and anticipates that the proposed amendments will not have any adverse impact on rural areas.

5. Rural area participation

The Agency will publish a general notice of the proposed amendments to its Plan. The Agency does not anticipate that the proposed amendments to its Plan will have any substantial direct effect on interests in rural areas. To provide any interested parties, including those in rural areas, with notice of the proposed amendments in addition to that provided by publication in the State Register, and to minimize costs of participation in the rule making process, the Agency will post and solicit comments on the proposed amendments on its website. Copies of the amended regulations will be available upon request in both hard copy and electronic format. The Agency shall respond in a timely manner to any written requests, comments, and questions about the proposed rule.

Job Impact Statement

1. Nature of impact

The proposed amendments will not have a substantial impact on jobs or employment opportunities because the amendments will not involve creation of substantial regulatory costs or burdens.

2. Categories and numbers affected

No categories of jobs or employment opportunities will be affected by the proposed amendments because they will not involve creation of substantial regulatory costs or burdens.

3. Regions of adverse impact

No specific regions of New York State will experience disproportionate adverse impact on jobs or employment opportunities because the amendments will not involve creation of substantial regulatory costs or burdens.

4. Minimizing adverse impact

Due to the proposed amendments' lack of adverse impact on jobs or employment in the State of New York, the Agency will not take any measures to minimize adverse impacts.

5. Self-employment opportunities

Not applicable because of the amendments' lack of adverse impact on jobs or employment.

Department of Labor

EMERGENCY RULE MAKING

New York State Worker Adjustment and Retraining Notification Act (WARN)

I.D. No. LAB-07-09-00013-E

Filing No. 1197

Filing Date: 2009-10-16

Effective Date: 2009-10-16

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

Action taken: Addition of Part 921 to Title 12 NYCRR.

Statutory authority: Labor Law, section 860-f

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

Specific reasons underlying the finding of necessity: The effective date of the regulations coincides with the effective date of their authorizing legislation, the New York Worker Adjustment and Retraining Notification (WARN) Act, a new law that becomes effective February 1, 2009. The Act governs the provision of notice to certain employees who will lose employment through plant closings, mass layoffs, or reductions in work hours. The purpose of the authorizing statute is to ensure that the employees are aware of future actions that will affect their employment so that they can take steps to secure new employment, be retrained for more readily available work, and otherwise make arrangements to provide for their needs and those of their families when their employment ends. The law is also intended to ensure the ability of the Department of Labor and its partner, the Workforce Investment Board, to provide Rapid Response services to the affected employees prior to their employment loss. These services include providing employees with information regarding unemployment insurance, job training, and reemployment services. These regulations fill in gaps found in the law in order to more fully inform employees of their obligations and workers of their rights under the law.

The emergency promulgation of these regulations is necessitated by the dramatic job losses currently being suffered within the state, the need to ensure that the notice requirements detailed in the regulation are available to protect workers affected by such job losses, and the needs to provide reemployment services to these workers in order to return them quickly to work. The State's private-sector job count has now dropped for nine consecutive months. Since the State's private sector job count peaked in August 2008, New York has lost 212,200 private sector jobs, erasing more than half of the 400,000 jobs added during the State's last economic expansion from 2003 to 2008. After seasonal adjustment, New York State's unemployment rate increased from 7.7 percent in April, 2009 to 8.2 percent in May, 2009, its highest level since February 1993. New York City's rate increased from 6.0 percent in November 2008 to 7.0 percent in December 2008 to 9.2 percent in May 2009, the highest since October 1997. Outside of New York City, the unemployment rate was 7.7 percent in May 2009. The number of unemployed state residents increased over the month by 51,000 to 802,400 in May, its highest level since July 1976.

The impact of these job losses on workers, their families, and their communities can be staggering, more so if workers are unaware that plant closings and layoffs are coming. The state WARN Act is designed to give workers time to avoid long periods of unemployment by affording them time to search for new work, retrain for more secure long-term employment, and take advantage of reemployment services which will ensure a quick return to work after their former employment ends. The proposed rules will ensure timely notice to the Department and early intervention of Rapid Response teams in situations involving employment losses so that workers can quickly transition into new employment or retraining following the loss of their jobs. Such activities also avoid or shorten periods of unemployment, thereby reducing employer charges associated with the receipt of unemployment insurance by their former employees. On the other hand, employees need to know of the availability of unemployment insurance benefits following these employment losses since the program is designed to provide an economic safety net to the workers and their families. All efforts that will quickly transition workers into new employment when their former jobs end, or that ensure some continued income during unemployment, will allow workers to continue to make needed purchases such as housing, food, heat and other utilities and to maintain the payment of school and property taxes that support their local community.

Enacting emergency regulations, which will immediately clarify the scope, timing, and content of the notice requirements, supports the goals set forth above and protects the general welfare of the state.

Subject: New York State Worker Adjustment and Retraining Notification Act (WARN).

Purpose: To provide government enforcement and more advance notice to a larger number of workers than under the federal WARN law.

Substance of emergency rule: The proposed rule creates a new section of regulations designated as 12 NYCRR Part 921 entitled "New York State Worker Adjustment and Retraining Notification Act" created under Chapter 475 of the Laws of 2008. This Act requires employers of fifty

(50) or more employees to provide at least ninety (90) days notice to affected employees and representatives of affected employees, the New York State Department of Labor, and local workforce partners before ordering a plant closing, mass layoff, or reduction in work hours that falls within the employment losses covered by the law. At least twenty-five (25) employees must be affected for the notice requirement to be triggered. The rule contains exceptions to the notice requirement for certain employers who are making good faith efforts to avoid employment losses and have reasonable expectation that these efforts will successfully forestall the plant closing, mass layoff, or reduction in work hours.

Many employers in the State are already subject to the federal WARN Act (29 USC § § 2101 - 2109 and 20 CFR 639.3). The State WARN Act expands the notice requirements to a larger group of employers and, concomitantly, extends its protections to more employees. The State Act also gives the Commissioner of Labor the authority to enforce the law on behalf of affected employees who did not receive appropriate notice of a plant closing, mass layoff, or covered reduction in work hours from their employer in violation of the law. Labor Law § 860-f(1) states that the Commissioner of Labor "shall prescribe such rules as may be necessary to carry out this article."

Subpart 921-1, entitled "Purpose and Definitions" sets forth the purpose and defines the terms used in the part. Section 921-1.1(d) defines "employer" as "any business enterprise, whether for-profit or not-for-profit, that employs fifty (50) or more employees within New York State, excluding part-time employees, or fifty (50) or more employees within the state that work in aggregate at least 2,000 hours per week." Section 921-1.1(a) defines "affected employee" as "an employee who may reasonably be expected to experience an employment loss as the result of a proposed plant closing, mass layoff, relocation, or covered reduction in hours by the employer."

Subpart 921-2, entitled "Notice," requires covered employers to provide notice to affected employees at least 90 calendar days prior to an event that triggers the notice requirement. This section enumerates the factors that trigger the notice requirement. It further spells out the contents of the notice, how notice is to be served and who must receive notice.

Subpart 921-3, entitled "Extension or Postponement of Mass Layoff Period" requires an employer to give additional notice if the triggering event is extended or postponed. Section 921-3.1 states that an "employer that previously announced and carried out a short-term layoff of six (6) months or less which is being extended beyond six (6) months due to business circumstances (e.g., unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff must give notice required under the Act and this Part as soon as it becomes reasonably foreseeable that an extension is required." Section 921-3.2 states that "if, after notice has been given, an employer decides to postpone a plant closing, mass layoff, or covered reduction in work hours for less than ninety (90) days, additional notice shall be given as soon as possible after the decision to postpone." This subpart also prohibits "rolling notice".

Subpart 921-4, entitled "Transfers," states that "notice is not required when an employer offers to transfer an employee to a different site of employment within a reasonable commuting distance with no more than a six (6)-month break in employment, regardless of whether the employee accepts such employment, or when an employer offers to transfer the employee to any other site of employment regardless of distance with no more than a six (6)-month break in employment and the employee accepts within thirty (30) days of the offer or of the closing or layoff, whichever is later."

Subpart 921-5, entitled "Temporary Employment," states that "notice is not required if the closing is of a temporary facility, or if the closing or layoff results from the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project, or undertaking." This subpart also makes clear that the burden of proof is on the employer to show that the job was understood to be temporary.

Subpart 921-6, entitled "Exceptions," provides exceptions to the 90-day notice period for which the employer bears the burden of proof. This subpart includes exceptions for faltering companies, unforesee-

able business circumstances, natural disasters, strikes or lockouts, and economic strikers.

Subpart 921-7, entitled “Enforcement by the Commissioner of Labor,” describes the administrative procedure followed by the Department when a WARN violation is suspected or alleged. Section 921-7.2 states that an employer who fails to give notice, as required, is subject to a civil penalty of \$500 for each day of the employer’s violation. Section 921-7.3 states that an employer who fails to give notice is liable to each employee for back pay and the value of any benefits to which the employee would have been entitled. Further this subpart provides for an administrative appeal to the Commissioner and then an appeal under Article 79 of the CPLR.

Subpart 921-8, entitled “Confidentiality of Information Obtained by the Commissioner of Labor,” requires that information obtained by the Commissioner through the administration of this Act be maintained as confidential and not be published or open to public inspection.

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. LAB-07-09-00013-EP, Issue of February 18, 2009. The emergency rule will expire December 14, 2009.

Text of rule and any required statements and analyses may be obtained from: Maria Colavito, Esq., New York State Department of Labor, State Office Campus, Building 12, Room 508, Albany, New York 12240, (518) 457-4380, email: nysdol@labor.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Labor Law § 860 as added by Chapter 475 of the Laws of 2008 sets forth the requirements of the State Worker Adjustment and Retraining Notification Act. Section 860-f states that the Commissioner of Labor shall prescribe such rules as may be necessary to carry out Article 25-A of the Labor Law.

2. Legislative objectives:

Article 25-A establishes the New York State Worker Adjustment and Retraining Notification (WARN) Act which is intended to provide more advance notice to a larger number of workers who are laid off from their jobs than under the federal WARN law. Under the State WARN, companies with at least 50 employees must provide at least 90 days’ notice to affected employees and their representatives, the New York Department of Labor, and the local Workforce Investment Board(s) where at least 25 of the employees will suffer an employment loss as a result of a plant closing, mass layoff, or a covered reduction in work hours by their employer. These provisions will allow the Department of Labor’s Rapid Response Unit to provide workers with reemployment and retraining services well in advance of their loss of employment. This early intervention is designed to reduce or avoid periods of unemployment, ensure that workers are aware of job placement and retraining services, and, if attempts to transition workers into new employment are unsuccessful, make them aware of the availability of unemployment insurance benefits as an economic safety net for them and their families. Under the Act, the Commissioner of Labor is required to enforce the law by recovering back wages on behalf of workers whose employers failed to give timely notice and by imposing penalties against such employers.

3. Needs and benefits:

Workers whose employment is affected as a result of plant closings, mass layoffs, or significant reduction of hours require early and adequate notice to find new employment and prepare for their future. As the downturn in the economy increasingly impacts companies large and small, larger numbers of workers are impacted by such events. Over the past quarter, more than 100,000 private sector jobs have been lost in New York State. At the time of this writing, the State’s seasonally-adjusted unemployment rate jumped from 6 percent in November to 7 percent in December, hitting a 14-year high and nearly equaling the nationwide 7.2 percent rate. The November-to-December unemployment rate spike was the biggest since the Department of Labor began tracking the state’s rate in 1976. Unemployment insurance covers less than half of the unemployed and does not capture any of the long term unemployed, persons in non-covered employment

who lost jobs, and others such as new entrants and those reentering the job market. Moreover, certain job sectors in the state, such as manufacturing, continue to decline, signaling a need to prepare workers exiting jobs in this sector with retraining to take other jobs in the economy. All in all, the current economic climate makes it essential to provide the Department with early access to workers who will be losing employment so that they can receive information and assistance that will return them to work as soon as possible following their job loss.

A federal WARN law has existed for a number of years; the law, however, does not apply to small and medium sized businesses; it only applies to firms with at least 100 employees where at least 50 workers have been affected by employment loss. As a result, large numbers of workers are not receiving the benefit of early warning of adverse employment events. If the State WARN law had been in effect in the 2007-2008 fiscal year, between 24,000 to 48,000 additional workers in at least 973 additional firms in New York would have been entitled to receive advance notice of layoffs. Fiscal Policy Institute, “The Role of Worker Notification in a New Economic Strategy for New York,” May 19, 2008. At the same time, the federal law does not provide an enforcement mechanism for workers aggrieved by an employer’s failure to comply. By contrast, the state statute allows the Commissioner of Labor to enforce the law against violating employers and to collect back wages and benefits and impose penalties as a deterrent to future violations.

Early intervention to assist workers with obtaining new jobs is key to avoiding the economic impact of large-scale employment losses on workers, their families, and their communities. Large-scale job losses addressed by the state law impact employee spending and lead to the general decline of the local economy. This affects businesses that serve the workforce, adversely impacts local sales and property taxes, housing values, and the like. The Department of Labor’s Dislocated Worker Unit provides rapid response activities to workers to transition them into new employment as quickly as possible after a job loss. They do this by providing access to and information about dislocated worker re-employment assistance, unemployment insurance benefit information, job training, and other services. The state WARN Act increases the benefit to be derived from these services by giving workers more time to plan their reemployment strategy and more time to obtain retraining (if needed). Moreover, the notice provided to the Department under the state law and rule will include detail that will assist the Department in providing such services including the names of affected workers. Early intervention leading to reemployment also reduces dependence upon unemployment insurance benefits for laid off workers. Although such benefits are a critical economic safety net for workers and their families, reemployment is always preferable and provides greater income to workers. Reemployment reduces UI charges to individual employers and also UI benefit costs. Reduction of UI benefit costs is particularly beneficial to the state at this point in time since the State expects it will have to borrow from the federal government over the course of the upcoming year in order to support benefit payments.

The state Act and regulations also meet a significant need by providing workers with an effective mechanism to seek redress for employer violations of the notice requirements. Currently, the federal WARN law requires aggrieved employees to bring private lawsuits to sue for redress; neither the federal nor state departments of labor have the authority to enforce the federal WARN law. Private actions are a remedy that has been very seldom used over the years given that workers who fail to receive the required federal WARN notice typically lack the resources to sue their employers. Instead, they must focus their efforts and savings on finding new employment to support their families. The State WARN Act and these emergency regulations, however, give the Commissioner of Labor the authority to recover back wages and benefits on behalf of such workers and to impose civil penalties against employers who fail to provide the required WARN notice.

4. Costs:

It is impossible to predict the potential cost of the rule on regulated parties with any certainty. As noted elsewhere in this document, employers with 100 or more employees are already required to provide WARN notice for covered employment losses. The rule extends

notification requirements to covered employment losses involving employers with 50 or more employees. There are 9,388 employers in the state who have between 50 and 100 employees. However, these employers will not necessarily be impacted by the rule unless they engage in a plant closing, mass layoff, or reduction in work hours that meets the numerical notice triggers set forth in the Act and the rule. Moreover, the number of employers set forth above is inflated because it includes employers with part-time employees who are not included in the numerical trigger computations referenced in the rule.

For those employers who are subject to the rule, costs of providing notice include preparation of the notice and mailing or delivery of the notice to affected workers, their representatives, the Department, and the local Workforce Investment Boards. The Department has attempted to keep such costs to a minimum by allowing employers to include notices with paychecks or direct deposit statements already provided to employees. Moreover, for those employers in New York already required to provide notice under the federal WARN Act, additional costs will be associated with providing notice to more employees, i.e. nominal postage costs or somewhat higher costs associated with other delivery methods which the employer may elect to use. However, since the notice will be a one page sheet of information, such postage charges should be minimal. The rule would not preclude an employer from utilizing the same notice to meet both state and federal notice requirements so long as the notice includes all information required under the proposed rule.

Apart from employee notice, which must be provided individually to all affected employees, only three other notices (Department of Labor, employee representatives, and local Workforce Investment Boards) are typically required. The only exceptions to this would involve circumstances in which employees may be represented by different unions or where covered employment sites are served by multiple Workforce Investment Boards. Under these circumstances, more than one notice may be required. In the event an employer has already given notice of a mass layoff and extends the duration of that layoff, or in the event an employer has given notice of a plant closing, mass layoff, relocation, or covered reduction in work hours and postpones that action for which notice was given, that employer must also give notice of the extension or postponement as soon as possible. Finally, the rule also requires that an employer, who elects to pay affected employees sixty days of pay and benefits to avoid liability and penalties for failure to provide the required notice, must still provide notice to affected employees notifying them of the potential availability of unemployment insurance and reemployment services. This notice must be provided with the final paycheck or through a separate notice provided at the time of termination. As elsewhere, the rule specifically provides the content of the notice for the convenience of regulated parties.

Employers who wish to assert an exception to the notice requirement will have to provide the Commissioner with documentary and other evidence that they fit one or more of the various exception categories. While such evidence should already exist in many circumstances, e.g. copies of loan or grant applications soliciting capital to continue business operations, other evidence may have to be compiled by the employer in response to an investigation of the employer's failure to provide timely notice, e.g. documentation of the effects of a unexpected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay, and other damages, as well as costs associated with their defense. The rule allows the Commissioner to forego damages and penalties where the employer timely makes payment equivalent to sixty days of pay and benefits to employees within three weeks of termination.

Minimal costs may be incurred by labor unions representing employees affected by plant closings, layoffs, and covered reductions in work hours but these costs would typically involve normal representational and information activities. Similarly, costs associated with WIB and Departmental responses to employment losses would be part of regularly funded workforce services and unemployment insurance activities.

5. Paperwork:

In addition to documentation discussed above, the proposal may result in increased paperwork for the Department. The Department's enforcement will require paperwork associated with investigations and, where necessary, hearings to determine violations and to impose appropriate penalties.

Employers charged with violating the law will have to document activities that would support their claim to exemptions from the notice provisions. In the event of appeals, there will be additional paperwork for the Department and employers to reproduce the hearing record and prepare necessary court filings.

6. Local government mandates:

The state WARN law does not apply to any units of local government so the regulations do not affect such entities. A local government may bring a civil action on behalf of any affected employee(s) and may recover attorney's fees from the court.

7. Duplication:

There is no duplication of existing state rules or regulations. There is some overlap of the proposed rules with federal rules governing the federal WARN; the Department has drafted state regulations to be consistent with federal rules to the extent possible, while still meeting the spirit and intent of the more stringent state law.

Rather than create new administrative rules to govern the WARN enforcement process, the Department's current procedural rules for Departmental hearings under 12 NYCRR Part 701 will be used for any administrative hearings conducted under the WARN Act, thereby avoiding duplication in this regard.

8. Alternatives:

The Department believes the promulgation of regulations will ensure that employers and employees impacted by the WARN Act are fully aware of their rights and responsibilities under law. Since the passage of the Act, regulated parties have been contacting the Department in large numbers requesting clarification of many provisions contained in statute, and requesting regulations to address these issues.

The Department has considered a number of other alternatives and, where possible, has selected those that will minimize the adverse impact of the rule. Wherever state and federal WARN laws contain identical requirements, these regulations track federal regulations for the federal WARN which have been in place for more than a decade. Where federal WARN regulations did not address issues pertinent to the state Act, or were inconsistent with the legislative intent behind the state law, the Department adopted different requirements. Rather than requiring a separate state and federal notice for those employers who are subject to both state and federal notice requirements, the Department chose to allow a single form of notice to be used so long as the notice contains all the information elements required under the state regulation. While the Department included a requirement that the WARN notice apprise affected employees of the availability of unemployment insurance and reemployment services, it chose to include in the rule the actual language that may be used by employers for this purpose. The Department also chose to allow delivery of the notice along with other routine contacts with employees such as with their paychecks or direct deposit slips should the employer choose to do so in order to avoid costs associated with separate delivery.

In considering whether an employer's out of state workers would count toward determining the size of the workforce needed to cover an employer under the state WARN Act, the Department noted that federal regulations count workers at foreign sites of employment to determine whether an employer's workforce would subject the employer to the federal Act, even though the foreign sites would not be covered. Since one of the main goals of the WARN Act is to require small and medium-sized businesses in the state to provide advance layoff notices and to extend the Department's rapid response to these additional firms, the Department determined that the regulations should be limited to companies' New York workforce.

The Department also considered alternatives regarding the scope of employee notice under the proposed rule. While the Department could have limited the information contained in the notice to that which is required by federal law, the Department believes it is critical that the notice contain information which employees can use to hasten their

return to work following termination of employment. While the Federal WARN rules encourage, but do not require the inclusion of useful information on dislocated worker assistance programs, the Department chose to require the notices to contain information on the potential availability of unemployment insurance and reemployment services. By providing the actual language which employers can use to satisfy this requirement, the Department minimized the impact of the requirement on the regulated community.

The Department also considered the alternative of creating a separate enforcement procedure for the state WARN Act, but instead decided to utilize the administrative procedure currently in place for other administrative hearings conducted by the Department.

9. Federal standards:

Federal standards implementing the federal WARN law exist and are found at 29 USC § 2101 - 2109 and 20 CFR 639.3. However, consistent with a less stringent federal law, such regulations provide a shorter period of notice, cover fewer employers, and do not permit administrative enforcement of the law. Since the Commissioner of Labor is required to enforce the Act, additional provisions not contained in the federal WARN regulations were included to ensure that information regarding notice requirements, investigations, and determinations in the state regulations sufficiently inform all affected parties of their rights and obligations and ensure a fair and thorough determination of violations based on the requirements of the Act.

10. Compliance schedule:

The Act takes effect February 1, 2009. Employers planning layoffs or other employment losses subject to the Act on or after February 1st must provide at least 90 days' notice prior to the planned termination date.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Worker Adjustment and Retraining Notification (WARN) Act (Chapter of the Laws of 2008, effective February 1, 2009) requires businesses in New York with 50 or more employees to provide notice at least 90 days prior to a plant closing, mass layoff, or covered reduction in work hours where at least 25 of the employees will experience an employment loss from such event. Prior to the Act, only larger firms with at least 100 workers covered by the federal WARN law were required to provide 60 days notice of such events. The state WARN notice must be given to the affected employees and their representatives, the New York Department of Labor, and the local Workforce Investment Board(s) where the employment losses occur. If the State WARN had been in effect during the 2007-2008 fiscal year, between 24,000 to 48,000 additional workers at 973 small and medium-sized firms in New York would have been entitled to receive such advance notice. Such notice would have allowed the Department to deploy Rapid Response staff to assist workers with reemployment and return them quickly to work after their employment loss. It is estimated that at least the same number of smaller and medium-sized businesses will be required to serve WARN notices in 2009, though the number may actually be larger given the current economic climate.

State, local, and tribal governments are not subject to the requirements of the rule.

The WARN notice will enable the Department of Labor to provide workers with access to and information concerning dislocated worker assistance, unemployment benefits, job training, and job opportunities. Most of the workers for these smaller-sized businesses are expected to remain with their employers until their last day of employment in order to continue to receive income.

2. Compliance requirements:

Employers of 50 or more employees, other than part-time employees, will be required to provide a WARN notice to the required parties under the WARN Act containing information set forth in the rule. Such employers must also maintain records to support any exception they may claim from the notice requirement so that they may share this information with the Department should it commence an investigation into the employer's failure to provide timely notice. Employers in New York are already required to maintain accurate and complete

payroll records in order to comply with state laws relating to wages and unemployment taxes. These records allow employers to know the size of their workforce and the hours worked by employees in order to determine whether a WARN notice is required. Information regarding employees who will be affected by a plant closing, mass layoff or covered reduction in work hours would have been developed and documented during the planning phase for such actions; therefore necessary information would be readily available to employers to assure compliance with the WARN notice requirements. To the extent that bumping rights might exist in the place of employment, these rights would be established in the employer's collective bargaining agreement with the union representing its workers. The rule acknowledges that information specifically identifying individuals affected by bumping rights may not be available at the time notice is required and simply requires that the notice contain a statement whether bumping rights exist. Finally, the records required to support a WARN exception claim are records that should already be in the employer's possession as, for example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open.

3. Professional services:

Employers covered by this rule are not expected to require professional services to comply with the rule. As noted above, information that must be included in the notice to the Department, the Workforce Investment Board, employees, and their representatives is simple, straightforward, and already available to the employer. It includes information regarding the planned action, the individuals who will be impacted, and employer contact information. The Department has included a requirement that the notice contain a statement for employees and their representatives regarding potential eligibility for unemployment insurance benefits and various reemployment services available from the Department. The Department has included the content of this notice in the rule to minimize the impact of the requirement on the employers.

Employers who are cited for a violation of the notice requirement may elect to hire legal counsel to defend such action.

4. Compliance costs:

The adoption of the regulations is expected to result in minimal costs to employers. They will be required to file a WARN notice with the required parties; costs associated with providing the notice will depend upon the number of employees affected and the means of delivery selected by the employer. The rule permits delivery of the notice to be included with employee pay or direct deposit statements. Notice may also be personally delivered to individual employees at the workplace. Should employers choose to send the notice via first class mail, postage costs would still be minimal as the notice should be no more than a one or two page document. Apart from employee notice, which must be provided individually to all affected employees, notices to the Department of Labor, employee representatives, and local Workforce Investment Boards are required. Again, postage costs associated with such delivery should be nominal. In some circumstances, employees suffering an employment loss may be represented by different unions. In those cases, notices would be required to be sent to each of the different unions. In rare circumstances where places of employment are served by multiple Workforce Investment Boards, more than one notice may be required.

In the event an employer has already given notice of a mass layoff and extends the duration of that layoff, or in the event an employer has given notice of a plant closing, mass layoff, relocation, or covered reduction in work hours and postpones that action for which notice was given, that employer must give notice of the extension or postponement as soon as possible.

Employers who wish to assert an exception to the notice requirement will have to provide the Commissioner with documentary and other evidence that they fit one or more of the various exception categories. While such evidence should already exist in many circumstances, e.g. copies of loan or grant applications soliciting capital to continue business operations, other evidence may have to be compiled by the employer in response to an investigation of the employer's failure to provide timely notice, e.g. documentation of the effects of a un-

expected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay and other damages, as well as costs associated with their defense. The rule allows the Commissioner to forego damages and penalties where the employer timely makes payment equivalent to sixty days of pay and benefits to employees within three weeks of termination.

Minimal costs may be incurred by labor unions representing employees affected by plant closings, layoffs, and covered reductions in work hours but these costs would typically involve normal representational and information activities. Similarly, costs associated with WIB and Departmental responses to employment losses would be part of regularly funded workforce services and unemployment insurance activities.

5. Economic and technological feasibility:

The adoption of these emergency regulations is not expected to create an undue burden on employers. Larger employers that are required to file a WARN notice with the Department in compliance with the federal WARN law may file a single notice so long as it meets the notice requirements set forth in the regulations. Consistent with current federal WARN regulations, notice must be provided using a method that ensures the timely receipt of notice by the required parties, such as first class mail or personal delivery. While the rules do also permit notice to be provided along with paychecks or direct deposit receipts, they do not permit electronic service of notice as this means is not considered reliable and not all employees may have email accounts.

6. Minimizing adverse impact:

The proposed rule is being promulgated in response to dozens of requests received from employers, their attorneys, workers, and worker representatives seeking clarification and guidance on the scope and requirements of the state WARN statute. The Department has sought to minimize adverse impact upon the regulated community by including provisions in the rule that address the issues and concerns raised in these inquiries. These provisions allow employers to better understand their obligations under the law, and inform employees of their rights under the law. This proposal is intended to assist employers to avoid violations while ensuring that workers receive the notice that will provide them with an opportunity to plan for their futures and support their families following employment termination.

The Department has taken a number of steps to minimize the adverse impact of the rule. Wherever state and federal WARN laws contain identical requirements, these regulations track federal regulations for the federal WARN which have been in place for more than a decade. For those employers who are subject to state and federal notice requirements, the Department will allow a single form of notice to be used so long as the notice contains all the information elements required under the state regulation. Where the Department included a requirement that the WARN notice apprise affected employees of the availability of unemployment insurance and reemployment services, the rule contains the actual language to be used by employers for this purpose. The rule allows delivery of the notice along with paychecks or direct deposit slips should the employer choose to do so, in order to avoid costs associated with separate delivery.

Another example of the Department's effort to minimize adverse impact involves the issue of whether an employer's out of state workers would count toward determining the size of the workforce needed to cover an employer under the state WARN Act. The federal regulations count workers at foreign sites of employment to determine whether an employer's workforce would subject the employer to the federal Act, even though the foreign sites would not be covered. Since one of the main goals of the WARN Act is to require small and medium-sized businesses in the state to provide advance layoff notices and to extend the Department's rapid response to these additional firms, the Department determined that the regulations should be limited to such companies' New York workforce.

The statute and regulation also minimize adverse impact by including exceptions to the notice requirement where the employer can demonstrate that providing the notice would adversely impact the business' efforts to obtain financing, customers, or other financial support

that would allow it to remain open or avoid employment losses. Employers who assert this defense to a failure to provide timely notice must be able to demonstrate such efforts to the satisfaction of the Department.

As a whole, the proposed rules ensure the early intervention of the Department in situations involving employment losses so that workers can quickly transition into new employment or retraining following the loss of their jobs. Where such activities lead to reemployment, employers will not face benefit charges associated with the receipt of unemployment insurance by their former employees. If such activities do not serve to avoid unemployment, unemployment insurance benefits will provide an economic safety net to the workers and their families. All efforts which will either keep the workers employed, move them quickly into new employment, or ensure some continued income will assist their communities. Income allows workers to continue to make needed purchases including housing, food, utilities, etc. and to maintain the payment of school and property taxes that support their local community. This income is particularly important in rural communities which often have fewer commercial and industrial businesses to support their tax base and depend upon employed residents to financially support local business and governmental services.

7. Small business and local government participation:

The state WARN Act and the proposed rule does not apply to state, local, or tribal governments.

The Department discussed the WARN Act at the Summer Meeting of the Labor and Employment section of the New York State Bar Association and at the Fall Meeting of the New York Chapter of the Association of Corporate Counsel. Many individuals attending these meetings likely represent small businesses impacted by the rule. In addition, the Department published information on its website, issued press releases, and held press conferences regarding the passage of the state WARN Act. All of these activities prompted numerous contacts from businesses, corporate counsel, and worker representatives identifying areas of the statute which they felt required clarification in the regulations. The Department has attempted to address all these requests for clarification in the rule.

The Department also intends to publish a copy of the rule on its website and to mail copies to organizations representing business and labor for distribution to their constituency. These information activities will be in addition to the formal publication of the proposed rule in the State Register.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Employers of fifty (50) or more employees in the state who engage in plant closings, mass layoffs, or reductions in work hours covered under the Act and the rule must provide notice of such employment losses under both the statute and the emergency rule. Such employers are located throughout the state and, therefore, all the state's rural areas are affected by the rule.

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

Rural area employers of 50 or more employees, other than part-time employees, who have a plant closing, mass layoff, or reduction in work hours covered by the Act will be required to provide a WARN notice to the required parties under the WARN Act containing information set forth in the rule. Such employers must also maintain records to support any exception they may claim from the notice requirement so that they may share this information with the Department should it commence an investigation into the employer's failure to provide timely notice. Employers in New York are already required to maintain accurate and complete payroll records in order to comply with state laws relating to wages and unemployment taxes. These records allow employers to know the size of their workforce and the hours worked by employees in order to determine whether a WARN notice is required. Information regarding employees who will be affected by a plant closing, mass layoff or covered reduction in work hours would have been developed and documented during the planning phase for such actions; therefore necessary information would be readily available to employers to assure compliance with the WARN

notice requirements. To the extent that bumping rights might exist in the place of employment, these rights would be established in the employer's collective bargaining agreement with the union representing its workers. The rule acknowledges that information specifically identifying individuals affected by bumping rights may not be available at the time notice is required and simply requires that the notice contain a statement whether bumping rights exist. Finally, the records required to support a WARN exception claim are records that should already be in the employer's possession as, for example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open.

Rural area employers covered by this rule are not expected to require professional services to comply with the rule. As noted above, information that must be included in the notice to the Department, the Workforce Investment Board, employees, and their representatives is simple, straightforward, and already available to the employer. It includes information regarding the planned action, the individuals who will be impacted, and employer contact information. The Department has included a requirement that the notice contain a statement for employees and their representatives regarding potential eligibility for unemployment insurance benefits and various reemployment services available from the Department. The Department has included the content of this notice in the rule to minimize the impact of the requirement on the employers.

Employers who are cited for a violation of the notice requirement may elect to hire legal counsel to defend such action.

3. Costs:

It is impossible to predict the potential cost of the rule on regulated parties with any certainty. As noted elsewhere in this rulemaking, employers with 100 or more employees are already required to provide WARN notice for covered employment losses. The rule extends notification requirements to covered employment losses involving employers with 50 or more employees. There are 9,388 employers in the state who have between 50 and 100 employees. Some of these employers will undoubtedly be located in rural areas. However, these employers will not necessarily be impacted by the rule unless they engage in a plant closing, mass layoff, or reduction in work hours that meets the numerical notice triggers set forth in the Act and the rule. Moreover, the number of employers set forth above is inflated because it includes employers with part-time employees who are not included in the numerical trigger computations referenced in the rule.

For those rural employers who are subject to the rule, costs of providing notice include preparation of the notice and mailing or delivery of the notice to affected workers, their representatives, the Department, and the local Workforce Investment Boards. The Department has attempted to keep such costs to a minimum by allowing employers to include notices with paychecks or direct deposit statements already provided to employees. Moreover, for those employers in New York already required to provide notice under the federal WARN Act, additional costs will be associated with providing notice to more employees, i.e. nominal postage costs or somewhat higher costs associated with other delivery methods which the employer may elect to use. However, since the notice will be a one page sheet of information, such postage charges should be minimal. The rule would not preclude an employer from utilizing the same notice to meet both state and federal notice requirements so long as the notice includes all information required under the proposed rule.

Apart from employee notice, which must be provided individually to all affected employees, only three other notices (Department of Labor, employee representatives, and local Workforce Investment Boards) are typically required. The only exceptions to this would involve circumstances in which employees may be represented by different unions, or where covered employment sites are served by multiple Workforce Investment Boards. Under these circumstances, more than one notice may be required. In the event an employer has already given notice of a mass layoff and extends the duration of that layoff, or in the event an employer has given notice of a plant closing, mass layoff, relocation, or covered reduction in work hours and postpones that action for which notice was given, that employer must also give notice of the extension or postponement as soon as possible.

Finally, the rule also requires that an employer, who elects to pay affected employees sixty days of pay and benefits to avoid liability and penalties for failure to provide the required 90-day notice, must provide notice to affected employees notifying them of the potential availability of unemployment insurance and reemployment services. This notice must be provided with the final paycheck or through a separate notice provided at the time of termination. As elsewhere, the rule specifically provides the content of the notice for the convenience of regulated parties.

Employers who wish to assert an exception to the notice requirement will have to provide the Commissioner with documentary and other evidence showing that they fit one or more of the various exception categories. While such evidence should already exist in many circumstances, e.g. copies of loan or grant applications soliciting capital to continue business operations, other evidence may have to be compiled by the employer in response to an investigation of the employer's failure to provide timely notice, e.g. documentation of the effects of an unexpected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay and other damages, as well as costs associated with their defense. The rule allows the Commissioner to forego damages and penalties where the employer timely makes payment equivalent to sixty days of pay and benefits to employees within three weeks of termination.

Minimal costs may be incurred by labor unions representing employees affected by plant closings, layoffs, and covered reductions in work hours but these costs would typically involve normal representational and information activities. Similarly, costs associated with WIB and Departmental responses to employment losses would be part of regularly funded workforce services and unemployment insurance activities.

To the extent that early intervention and reemployment services offered by the Department through its Rapid Response activities reduce the number of workers who will ultimately claim unemployment insurance benefits as a result of the adverse employment action, covered employers will see UI charges decrease as a result of the rule.

4. Minimizing adverse impact:

The proposed rule is being promulgated in response to dozens of requests received from employers and attorneys representing them seeking clarification and guidance on the scope and requirements of the statute creating the state WARN program. The Department has sought to minimize adverse impact upon the regulated community by including language in the rule that addresses the issues and concerns raised in these inquiries.

Wherever feasible and desirable, these regulations track federal regulations for the federal WARN which have been in place for more than a decade. The Department will allow a single notice form to be used to satisfy both the state and federal notice requirements so long as the form contains all the information elements required under the state regulation. The Department has also drafted language to be included in the notice informing employees of the availability of Departmental programs and benefits as a service to employers. Service of notice is permitted along with paychecks or direct deposit slips should the employer choose to do so in order to avoid costs associated with separate delivery.

The statute and regulation also minimize adverse impact by including exceptions to the notice requirement where the employer can demonstrate that providing the notice would adversely impact the business' efforts to obtain financing, customers, or other financial support that would allow it to remain open or avoid employment losses. Employers who assert this defense to a failure to provide timely notice must be able to demonstrate such efforts to the satisfaction of the Department.

As a whole, the proposed rules ensure the early intervention of the Department in situations involving employment losses in rural areas so that workers can quickly transition into new employment or retraining following the loss of their jobs. Where such activities lead to reemployment, employers will not face benefit charges associated with the receipt of unemployment insurance by their former

employees. If such activities do not serve to avoid unemployment, unemployment insurance benefits will provide an economic safety net to the workers and their families. All efforts which will either keep the workers employed, move them quickly into new employment, or ensure some continued income will assist their rural area communities. Income allows workers to continue to make needed purchases including housing, food, utilities, etc. and to maintain the payment of school and property taxes that support their local community. This income is particularly important in rural communities which often have fewer commercial and industrial businesses to support their tax base and depend upon employed residents to financially support local business and governmental services.

5. Rural area participation:

The Department discussed the WARN Act at the Summer Meeting of the Labor and Employment section of the New York State Bar Association and at the Fall Meeting of the New York Chapter of the State Association of Corporate Counsel. Individuals attending these events likely represent some clients located in rural areas. In addition, the Department published information on its website, issued press releases, and held press conferences regarding the passage of the state WARN Act. These efforts resulted in the Department receiving dozens of phone calls and written requests for clarification of various aspects of the law from all over the state. The Department has attempted to address all these requests for clarification in the emergency rule.

The Department intends to publish a copy of the rule on its website and to mail copies to organizations representing business and labor in all areas of the state, including rural areas, for their comment and distribution to their constituency, including those located in rural areas. These information activities will be in addition to the formal publication of the rule in the State Register.

Job Impact Statement

This rule requires notice to be provided to employees and other parties 90 days prior to covered plant closings, mass layoffs, relocations, and reductions in work hours at sites of employment subject to the rule. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Making Adjustments to the Regulations Dealing with the State Minimum Wage as Required by the Increase in the Federal Minimum Wage that Took Effect 7/24/09 and Adjusting Various Wage Allowances in the Same Proportion as this Minimum Wage Increase

I.D. No. LAB-44-09-00019-EP

Filing No. 1220

Filing Date: 2009-10-20

Effective Date: 2009-10-20

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

Proposed Action: Amendment of Parts 137, 138, 141, 142, 143 and 190 of Title 12 NYCRR.

Statutory authority: Labor Law, art. 19, sections 652(2) and 673(1)

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

Specific reasons underlying the finding of necessity: The federal minimum wage increased to \$7.25 per hour on July 24, 2009. Current State law (Labor Law Section 652(1)) provides that the State minimum wage shall be \$7.15 "or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors." Labor Law Section 652(2) provides that all minimum wage orders shall be modified to increase all monetary amounts therein in the same proportion as the increase in the hourly minimum wage as provided in subdivision one of that section. Therefore, the July 24, 2009 increase in the federal minimum wage mandates both an increase in the State minimum wage and a corresponding modification of the minimum wage orders.

Subject: Making adjustments to the regulations dealing with the State Minimum Wage as required by the increase in the federal minimum wage that took effect 7/24/09 and adjusting various wage allowances in the same proportion as this minimum wage increase.

Purpose: To bring the State minimum wage into compliance with the Federal minimum wage, to take effect 7/24/2009.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.labor.state.ny.us): In compliance with Labor Law Section 652(2), due to the increase in the federal minimum wage to \$7.25 per hour, the following modifications are made to existing Wage Orders:

12 NYCRR Part 137 (Minimum Wage Order for the Restaurant Industry)- increase the basic hourly minimum wage to \$7.25 (137-1.2) with corresponding increases to tip allowance for service employees (137-1.4(a)), tip allowance for food service workers (137-1.5), uniform allowance (137-1.8), meal and lodging allowances (137-1.9), classification of executive work (137-3.2(c)(1)(i)), classification of administrative work (137-3.2(c)(1)(ii)).

12 NYCRR Part 138 (Minimum Wage Order for the Hotel Industry)- increase the basic hourly minimum wage to \$7.25 (138-2.1(a)) with corresponding increases to tip allowance for service employees (138-2.1(b)), tip allowance for food service workers (138-2.1(c)), tip allowance for chambermaids in resort hotels (138-2.1(d)), uniform allowance (138-2.5), meal and lodging allowances (138-2.7), classification of executive work (138-4.4(c)(1)(i)), classification of administrative work (138-4.4(c)(1)(ii)).

12 NYCRR Part 141 (Minimum Wage Order for the Building Service Industry)- increase the basic hourly minimum wage to \$7.25 (141-1.3) with corresponding increases to unit rate for janitors in residential buildings (141-1.2), allowances for utilities (141-1.6), uniform allowance (141-1.8), unit rate limitations (141-2.8), classification of executive work (141-3.2(c)(1)(i)), classification of administrative work (137-3.2(c)(1)(ii)).

12 NYCRR Part 142-2 (Minimum Wage Order for Miscellaneous Industries except nonprofitmaking institutions)- increase the basic hourly minimum wage to \$7.25 (142-2.1) with corresponding increases to meal and lodging allowances (142-2.5(a)), uniform allowance (142-2.5(c)), classification of executive work (142-2.14(c)(4)(i)), classification of administrative work (142-2.14(c)(4)(ii)).

12 NYCRR Part 142-3 (Minimum Wage Order for nonprofitmaking institutions that have not elected to be exempt from coverage under a minimum wage order)- increase the basic hourly minimum wage to \$7.25 (142-3.1) with corresponding increases to meal and lodging allowances (142-3.5(a)), uniform allowance (142-3.5(c)), classification of executive work (142-3.12(c)(2)(i)), classification of administrative work (142-3.12(c)(2)(ii)).

12 NYCRR Part 143 (Minimum Wage Order for nonprofitmaking institutions that certifies that it will pay the statutory minimum wage in lieu of being covered under a minimum wage order)- increase the basic hourly minimum wage to \$7.25 (143.0) with corresponding increases to classification of executive work (143.1(b)(1)), classification of administrative work (142.1(b)(2)).

12 NYCRR Part 190 (Minimum Wage Order for Farm Workers)- revise the definition of "basic minimum hourly wage" (190-1.3(d)), increase the basic hourly minimum wage to \$7.25 (190-2.1).

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire January 17, 2010.

Text of rule and any required statements and analyses may be obtained from: Jeffrey G. Shapiro, Esq., New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: cejjs@labor.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.

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

Regulatory Impact Statement

1. Statutory authority: Article 19 Sections 652(2) and 653(2), Article 2 Section 21 (11), and Article 19-A Sections 673(2) and 674(1) of the Labor Law require the Commissioner of Labor to issue regulations modifying wage orders to reflect increases in the minimum wage and related allowances. Article 19 Section 652(2) gives the Commissioner authority to modify the minimum wage orders in proportion to the increase in the minimum wage. Article 19 Section 653(1) gives the Commissioner authority to investigate the adequacy of wages. Article 2 Section 21(11) gives the Commissioner authority to issue such regulations governing any provision of the labor law as she finds necessary and proper. Article 19-A Section 673(2) requires the farm minimum hourly rate to increase whenever the general minimum hourly

rate required by Section 652(1) increases. Article 19-A Section 674(1) authorizes the Commissioner to promulgate such regulations as she deems appropriate to carry out this article and to safeguard the minimum wage standards.

2. Legislative objectives: The legislature found it necessary to set a minimum hourly rate and authorized the Commissioner to promulgate regulations setting allowances for gratuities, meals, lodging, apparel and such other items, services and facilities, in order to remediate wages that are insufficient to provide adequate maintenance for employees and their families; to promote the health, efficiency and well-being of employees; to prevent unfair competition against other employers and their employees; to promote stability of industry; to maintain the purchasing power of employees; and to minimize the necessity to supplement wages with public money for relief or other public and private assistance.

The proposed regulations increase the allowances for gratuities, meals, lodging, and uniform maintenance, and the minimum salary for executive and administrative exemption, in proportion to the statutory increase in the hourly minimum wage rate, thus maintaining the existing proportionality among the elements of the wage orders.

3. Needs and benefits: The amendments to the wage orders are needed to conform the regulations to Section 652.2 of the Labor Law, which requires the Commissioner to modify the wage orders to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage. The modified minimum wage orders are to be promulgated by the Commissioner without a public hearing, and without reference to a wage board, and to become effective on the effective date of an increase in the hourly minimum wage (July 24, 2009). Overall impact of these amendments is small and there is no significant benefit or harm to employees or employers.

4. Costs: These regulations will increase the minimum wage from \$7.15 per hour to \$7.25 per hour as required by Federal law. As required by 652(2), these regulations will also increase the amounts specified in minimum wage orders as allowances for gratuities, and, when furnished by the employer to the employees, for meals, lodging, uniform maintenance, and minimum salary for executive and administrative exemptions in the same proportion as the increase in the hourly minimum wage, rounded off to the nearest five cents.

5. Local government mandates: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Parts 137, 138, 141, and 142 by Labor Law Section 651.5 (n) and 651.5 (last paragraph). They are not covered under Part 143 because it covers only certain non-profit organizations, in accordance with Section 652.3 of the Labor Law. They are excluded from coverage under Part 190 by Section 671.2 of the Labor Law.

6. Paperwork: There are no additional paperwork requirements in these amendments.

7. Duplication: None.

8. Alternatives: There are no alternatives, as the Commissioner has no discretion to amend the regulations other than as set forth in these amendments.

9. Federal standards: Generally, Parts 137, 138, 141, 142, 143 and 190 exceed the minimum standards found in the federal Fair Labor Standards Act with respect to minimum wage allowances and salary thresholds for exempt employees. The FLSA's tip allowance provisions after the minimum wage increase on July 24, 2009 will continue to permit employers to pay tipped employees as little as \$2.13 per hour. In contrast, New York State's tip allowance provisions, as amended by these regulations, will require employers to pay tipped employees at least \$4.35 per hour and in most cases at least \$4.65 per hour. The FLSA's meal and lodging allowance provisions will continue to permit employers to claim the fair market value of these items as part of the minimum wages paid to employees. In contrast, New York State's wage orders do not allow fair market value credits and, under these amendments, will continue to set fixed limits on the value of these items as part of the minimum wages paid to employees. The FLSA's salary thresholds for exemption will continue to be far lower than New York State's. The uniform maintenance provisions of New York's existing and amended wage orders will continue to require, in most cases, payments to employees that the FLSA would

not require. Wage Boards established these standards many years ago and the Labor Law requires that the wage allowances be modified in proportion to any increase in the hourly minimum wage.

10. Compliance schedule: Regulated entities should be able to achieve immediate compliance with the regulations. The Department of Labor will publicize the rates change, update our website to provide full details, and assist employers as needed.

Regulatory Flexibility Analysis

1. Effect of rule: All small businesses, but no local governments, are potentially affected by the changes in the regulations.

2. Compliance requirements: There are no changes in the reporting or record-keeping requirements. Businesses that employ tipped employees, provide meals or lodging to employees, or require employees to wear and maintain their own uniforms will have to check their payrolls to make sure they pay at least enough to comply with the statutory increase in the hourly minimum wage rate, as adjusted or mitigated by the small changes in the wage order allowances contained in the new regulations. Businesses in general will have to check the salaries of their lowest-paid executive and administrative exempt employees. Some, but not all, will have to make a small increase in these salaries.

3. Professional services: These regulations will not require small businesses to obtain additional professional services.

4. Compliance costs: These regulations will increase the minimum wage from \$7.15 per hour to \$7.25 per hour as required by Federal law. As required by Labor Law Section 652(2), these regulations will also increase the amounts specified in minimum wage orders as allowances for gratuities, and, when furnished by the employer to the employees, for meals, lodging, uniform maintenance, and minimum salary for executive and administrative exemptions in the same proportion as the increase in the hourly minimum wage, rounded off to the nearest five cents.

5. Economic and technological feasibility: Compliance with these regulations will be economically and technologically feasible since wage order allowances and special rates have been in existence for a number of years and employers affected by these allowances and rates should already have payroll procedures set up.

6. Minimizing adverse impact: Small businesses may be impacted by the increase in the Federal and State minimum wage. However, these regulations may mitigate the effect of the statutory increase in the minimum hourly rate by increasing the minimum wage allowances that businesses are currently permitted to take. The regulations do not impose any new paperwork or record-keeping requirements.

7. Small business and local government participation: The Business Council of New York, Inc., the New York State Restaurant Association and the New York State Hospitality & Tourism Association were made aware of these new regulations, and directed to the New York State Department of Labor's website, where these regulations are posted. The Department did not receive any comments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These regulations apply to all private employers in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no additional reporting, record-keeping or compliance requirements for regulated employers and no need for additional professional services.

3. Costs: These regulations will increase the minimum wage from \$7.15 per hour to \$7.25 per hour as required by Federal law. As required by Labor Law Section 652(2), these regulations will also increase the amounts specified in minimum wage orders as allowances for gratuities, and, when furnished by the employer to the employees, for meals, lodging, uniform maintenance, and minimum salary for executive and administrative exemptions in the same proportion as the increase in the hourly minimum wage, rounded off to the nearest five cents.

4. Minimizing adverse impact: Small businesses may be impacted by the increase in the Federal and State minimum wage. However, these regulations may mitigate the effect of the statutory increase in the minimum hourly rate by increasing the minimum wage allow-

ances that businesses are currently permitted to take. The regulations do not impose any new paperwork or record-keeping requirements.

5. Rural area participation: The Business Council of New York, Inc., the New York State Restaurant Association and the New York State Hospitality & Tourism Association were made aware of these new regulations, and directed to the New York State Department of Labor's website, where these regulations are posted. The Department did not receive any comments.

Job Impact Statement

1. Nature of impact: These regulations will have no significant impact on jobs and employment opportunities. They conform the Wage Orders to the statutory increase in the New York State minimum hourly wage rate that is required by Labor Law Sections 652 and 673 when the federal minimum hourly wage rate increases to \$7.25 per hour effective July 24, 2009.

2. Categories and numbers affected: These regulations will have no significant impact on employed persons or businesses.

3. Regions of adverse impact: There will be no adverse impact on employment opportunities in any region of the state as a result of these regulations.

4. Minimizing adverse impact: There will be no adverse impact on employment opportunities as a result of these regulations.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Notification of Incidents and Access to Records

I.D. No. MRD-32-09-00007-A

Filing No. 1219

Filing Date: 2009-10-20

Effective Date: 2009-12-01

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

Action taken: Addition of section 624.8; and amendment of sections 624.1, 624.2, 624.3, 624.4, 624.5, 624.6, 624.20 and 633.10 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 33.23 and 33.25

Subject: Notification of incidents and access to records.

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

Text or summary was published in the August 12, 2009 issue of the Register, I.D. No. MRD-32-09-00007-P.

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S is not needed.

Assessment of Public Comment

One individual sent written comments regarding the proposed regulations. The individual is a parent of a person receiving services in the OMRDD system and a professional (teacher/RN). In addition to questions and comments about related policy issues, the individual had the following comments on the proposed regulations:

Comment: The individual appreciates the efforts to strengthen safeguards and to provide a more open and cooperative system including some better notification and appeal procedures.

Response: OMRDD shares these goals and developed the regulations accordingly.

Comment: The individual stated that ironically some professionals are interpreting the regulations as having to withhold information which they once shared freely. She stated that the professionals now sometimes depend upon formal written requests for records as the necessary trigger for sharing information that was previously given in an informal and timely manner to parents/guardians.

Response: The regulations do not restrict agencies from providing information informally.

Comment: The individual is very much in favor of the proposal to report visits to urgent care centers.

Response: OMRDD appreciates the support of this aspect of the proposed regulations. The final regulations include this provision.

Comment: The individual noted that in her son's situation it is crucial that she be notified in many more situations than those specified in OMRDD regulations. She also noted that every communication didn't need to be reportable with official forms and investigations.

Response: OMRDD agrees that communication and notification of events and situation should not be limited to the minimum levels required by regulation. "Putting people first" means that providers should consider the unique needs of the individuals and the expressed wishes of family members in establishing protocols and expectations regarding notification for each individual.

Comment: The individual recommended that all diagnostic procedures, regardless of outcome, need to be documented and communicated to the person's advocates. In addition, she recommended that if a medical professional provides a prescription, it is serious enough to communicate.

Response: OMRDD agrees with the value of communication. However, it observes that the extent of necessary communication varies from individual to individual. The minimum level of communication required by regulation should be viewed as a baseline that applies to all individuals receiving services. Again, OMRDD recognizes that for many individuals the level of communication appropriate to their situation will exceed the minimum levels. While OMRDD is not adding additional situations to the list of those which require notification at this time, it will consider during the course of future rulemakings whether to expand the list.

Comment: The individual discussed the period of time established for the required disclosure of records and documents pertaining to an allegation of abuse, and recommended that it be shortened. The proposed regulations require that the records and documents be released 21 days after the closure of the alleged abuse case or 21 days after the request, if the request is made after closure.

Response: The timeframe in the proposed regulation is in accordance with Jonathan's Law (Section 33.25 of the Mental Hygiene Law) which states, "Such records and documents shall be made available by the appropriate office within twenty-one days of the conclusion of its investigation." Further, OMRDD observes that records subject to disclosure can be extensive, and that assembling and redacting the requested documents can be very time consuming. OMRDD is therefore promulgating the regulations with the original timeframe.

Comment: The individual advocated that agency staff identify what records are available to qualified persons and facilitate the release of the records.

Response: OMRDD has developed a brochure, "Learning about Incidents," which was widely distributed and is available at www.omr.state.ny.us. The brochure includes information about the right to access records under Jonathan's Law. OMRDD has also facilitated the distribution of the educational pamphlet developed by the Commission on the Quality of Care and Advocacy for Persons with Disabilities in accordance with the provisions of Jonathan's Law, which also includes information about the right to access records. (The pamphlet, "Access to Mental Hygiene Records in New York State," is also available at www.omr.state.ny.us and www.cqcapd.state.ny.us.)

Qualified persons may request records and documents pertaining to an allegation of abuse and agencies must identify all such records and documents and make them available pursuant to Jonathan's Law and these implementing regulations.

When training agency staff in the regulations, OMRDD also stressed the need for agencies to communicate effectively with individuals and family members about incidents and allegations of abuse. OMRDD notes that in many situations, good communication meets the needs of the concerned individual or family member in a better fashion than the provision of copies of records and documents.

Comment: The individual expressed support for the provision which gave the provider the discretion to honor spoken requests for the initial incident or allegation of abuse report.

Response: OMRDD appreciates this support. The provision is included in the final regulations.

Public Service Commission

NOTICE OF ADOPTION

Accounting Treatment of Pension Internal Reserve Account

I.D. No. PSC-22-07-00018-A

Filing Date: 2009-10-15

Effective Date: 2009-10-15

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 the terms of a Joint Proposal, with one minor clarification, regarding New York Water Service Corporation's accounting treatment of carrying charges on pension internal reserves.

Statutory authority: Public Service Law, section 89-c

Subject: Accounting treatment of pension internal reserve account.

Purpose: To approve the accounting treatment of pension internal reserve account.

Substance of final rule: The Commission, on October 15, 2009, adopted the terms of a Joint Proposal regarding New York Water Service Corporation's accounting treatment of carrying charges on pension internal reserves, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-W-0463SA1)

NOTICE OF ADOPTION

Issuance of Securities and Amendment of Certificate of Incorporation

I.D. No. PSC-43-07-00024-A

Filing Date: 2009-10-19

Effective Date: 2009-10-19

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 authorizing the Joint Petition of KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island to issue one share each of Voting Junior Preferred Stock to a private independent entity.

Statutory authority: Public Service Law, sections 69 and 108

Subject: Issuance of securities and Amendment of Certificate of Incorporation.

Purpose: To approve the issuance of one share each of Voting Junior Preferred Stock to a private independent entity.

Substance of final rule: The Commission, on October 15, 2009, adopted

an order authorizing the Joint Petition of KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island to issue one share each of Voting Junior Preferred Stock to a private independent entity, and approved an amendment to the Certificates of Incorporation if executed with the revisions described in the Order, 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.

(06-M-0878SA2)

NOTICE OF ADOPTION

The Long-Term Debt Issuance of Up to \$30 Million in Promissory Notes

I.D. No. PSC-14-09-00019-A

Filing Date: 2009-10-19

Effective Date: 2009-10-19

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 United Water New York Inc. to issue and sell up to \$30 million of long-term debt through July 31, 2010.

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

Subject: The long-term debt issuance of up to \$30 million in promissory notes.

Purpose: To approve the long-term debt issuance of up to \$30 million in promissory notes.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving the petition of United Water New York Inc. to issue and sell up to \$30 million of long-term debt through July 31, 2010, 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-W-0229SA1)

NOTICE OF ADOPTION

Major Gas Rate Filing

I.D. No. PSC-23-09-00008-A

Filing Date: 2009-10-16

Effective Date: 2009-10-16

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 the terms and conditions of a joint proposal and implemented a three-year rate plan for Orange and Rockland Utilities, Inc.

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

Subject: Major gas rate filing.

Purpose: To adopt the terms of a joint proposal for a three-year rate plan.

Substance of final rule: The Commission, on October 15, 2009, adopted the terms and conditions of a joint proposal and implemented a three-year rate plan for Orange and Rockland Utilities, Inc., 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-G-1398SA1)

NOTICE OF ADOPTION

A Methodology for Performing Economic Deliverability Studies

I.D. No. PSC-27-09-00017-A

Filing Date: 2009-10-20

Effective Date: 2009-10-20

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 a uniform methodology for conducting generator energy deliverability studies by renewable developers.

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

Subject: A methodology for performing economic deliverability studies.

Purpose: To approve a methodology for performing economic deliverability studies.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving a uniform methodology for conducting generator energy deliverability studies by renewable developers and requiring each new applicant for a certificate of public convenience and necessity to provide a study or seek an exemption from the requirement, 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-0497SA1)

NOTICE OF ADOPTION

Removal of the Company from the Commission's Jurisdiction List and Cancelling the Tariff

I.D. No. PSC-28-09-00012-A

Filing Date: 2009-10-20

Effective Date: 2009-10-20

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 removing Dwight Arthur and Betty Lemonik Water Company from the list of water companies subject to the jurisdiction of the Commission and cancelling its tariff.

Statutory authority: Public Service Law, sections 2(26), (27), 4(1), 5(1)(f), 89-b, 89-c(1) and 89-h

Subject: Removal of the company from the Commission's jurisdiction list and cancelling the tariff.

Purpose: To approve the removal of the company from the Commission's jurisdiction list and cancelling the tariff.

Substance of final rule: The Commission, on October 15, 2009, adopted an order removing Dwight Arthur and Betty Lemonik Water Company from the list of water companies subject to the jurisdiction of the Public Service Commission and cancelling its tariff.

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-W-0518SA1)

NOTICE OF ADOPTION

Continuation of the Company's Conservation Incentive Program for a Third Program Year

I.D. No. PSC-29-09-00007-A

Filing Date: 2009-10-19

Effective Date: 2009-10-19

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, National Fuel Gas Distribution Corporation's (Company) request to continue the Company's Conservation Incentive Program for a third program year, December 2009 through November 2010.

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

Subject: Continuation of the Company's Conservation Incentive Program for a third program year.

Purpose: To approve the Company's Conservation Incentive Program for a third program year.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving, with modifications, National Fuel Gas Distribution Corporation's (Company) request to continue the Company's Conservation Incentive Program for a third program year, December 2009 through November 2010, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-G-0141SA3)

NOTICE OF ADOPTION

Issue and Sell Securities and Other Forms of Indebtedness

I.D. No. PSC-29-09-00010-A

Filing Date: 2009-10-19

Effective Date: 2009-10-19

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 Orange and Rockland Utilities, Inc. to issue and sell up to a total of \$500 million of securities, through December 31, 2013.

Statutory authority: Public Service Law, section 69

Subject: Issue and sell securities and other forms of indebtedness.

Purpose: To approve the issuance and sale of securities and other forms of indebtedness including derivative contracts.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving the petition of Orange and Rockland Utilities, Inc. (Company) to issue and sell up to a total of \$500 million of securities, through December 31, 2013, of which up to \$100 million may be in Company preferred stock, and to enter into multi-year committed credit agreements, in amounts not to exceed \$200 million in the aggregate. In ad-

dition, the Company is authorized to issue and sell unsecured long-term debt in an amount not to exceed \$389 million, for refunding of existing long-term debt, 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-M-0529SA1)

NOTICE OF ADOPTION

Denying the Alternative Surcharge Mechanism to Collect the Temporary State Assessment

I.D. No. PSC-30-09-00017-A
Filing Date: 2009-10-15
Effective Date: 2009-10-15

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 denying the petition of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corp. d/b/a National Grid, and Niagara Mohawk Power Corp. d/b/a National Grid to establish an alternative surcharge.

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

Subject: Denying the alternative surcharge mechanism to collect the Temporary State Assessment.

Purpose: To deny the alternative surcharge mechanism to collect the Temporary State Assessment.

Substance of final rule: The Commission, on October 15, 2009, adopted an order denying the petition of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid to establish an alternative surcharge mechanism to collect the Temporary State Assessment, 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-M-0311SA2)

NOTICE OF ADOPTION

Uniform System of Accounts - Request for Recovery of Deferral Amortization

I.D. No. PSC-31-09-00010-A
Filing Date: 2009-10-20
Effective Date: 2009-10-20

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 authorizing the City of Jamestown Board of Public Utilities to recover the gas and steam turbine maintenance overhaul amortization from the Dismantling Fund.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (5), (9) and (12)

Subject: Uniform System of Accounts - request for recovery of deferral amortization.

Purpose: To approve the petition to recover two deferral amortizations.

Substance of final rule: The Commission, on October 15, 2009, adopted an order authorizing the City of Jamestown Board of Public Utilities (Jamestown BPU) to recover the gas turbine maintenance overhaul amortization of \$153,989, and the steam turbine maintenance overhaul of \$137,249, respectively, from the Dismantling Fund, and allow Jamestown BPU to recover the remaining years' amortizations from the Dismantling Fund if any future year's off-system sales margins are greater than \$1,525,000, 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-0553SA1)

NOTICE OF ADOPTION

An Alternative Method of Recovering the Temporary Annual Assessment

I.D. No. PSC-32-09-00003-A
Filing Date: 2009-10-15
Effective Date: 2009-10-15

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, as a Permanent Rule, Corning Natural Gas Corporation's petition for authority to implement an alternative method of recovering the Temporary Annual Assessment.

Statutory authority: Public Service Law, section 18a

Subject: An alternative method of recovering the Temporary Annual Assessment.

Purpose: To adopt as a permanent rule an alternative method of recovering the Temporary Annual Assessment.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving, as a Permanent Rule, Corning Natural Gas Corporation's petition for authority to implement an alternative method of recovering the Temporary Annual Assessment.

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-0546SA1)

NOTICE OF ADOPTION

The Financing and Lightened Regulation of Electric Operations

I.D. No. PSC-33-09-00013-A
Filing Date: 2009-10-16
Effective Date: 2009-10-16

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 Stephentown Regulation Services LLC (company) for financing, and for lightened regulation of the company as an electric corporation.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: The financing and lightened regulation of electric operations.

Purpose: To approve financing and lightened regulation of electric operations.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving the petition of Stephentown Regulation Services LLC (Company) for financing pursuant to PSL § 69, and for lightened regulation of the Company as an electric corporation in connection with the construction of an energy storage project to be located in the Town of Stephentown, Rensselaer County, 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-0592SA1)

NOTICE OF ADOPTION

Transfer of Ownership Interests

I.D. No. PSC-34-09-00012-A

Filing Date: 2009-10-16

Effective Date: 2009-10-16

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 RPL Holdings, Inc. (RPL), Power City Generating, Inc., Power City Partners, L.P., and MEG Development Company LLC (MEG) for the transfer of ownership interests.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Transfer of ownership interests.

Purpose: To approve transfer of ownership interests.

Substance of final rule: The Commission, on October 15, 2009, adopted an order approving the petition of RPL Holdings, Inc. (RPL), Power City Generating, Inc., Power City Partners, L.P., (Power City) and MEG Development Company LLC (MEG) for the transfer of ownership interests in Power City's 85 MW generating facility located in Massena, New York from RPL to MEG and the proposed financings supporting the purchase of the facility, 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-0574SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Time Warner ResCom and Trumansburg Tele. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00003-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Trumansburg Telephone, Inc. Company executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Trumansburg Tele. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Trumansburg Tele.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Trumansburg Telephone Company, Inc. have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Trumansburg Telephone Company, 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 for the term of an underlying agreement.

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.
(09-01812SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Time Warner ResCom and Pattersonville for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00004-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 Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Pattersonville Telephone Company executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Pattersonville for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Pattersonville.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Pattersonville Telephone Company have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Pattersonville Telephone Company 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 for the term of an underlying agreement.

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.

(09-01813SP1)

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

Interconnection of the Networks between Time Warner ResCom and Ontario Tele. Co. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00005-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Ontario Telephone Company executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Ontario Tele. Co. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Ontario Tele. Co.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Ontario Telephone Company, Inc. have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Ontario Telephone Company, 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 for the term of an underlying agreement.

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.

(09-01814SP1)

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

Interconnection of the Networks between Time Warner ResCom and Oneida County for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00006-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 a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Oneida County Rural Telephone Company executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Oneida County for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Oneida County.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Oneida County Rural Telephone Company have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Oneida County Rural Telephone Company 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 for the term of an underlying agreement.

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.

(09-01815SP1)

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

Interconnection of the Networks between Time Warner ResCom and Nicholville Tele. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00007-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Nicholville Telephone Company, Inc. executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Nicholville Tele. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Nicholville Tele.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Nicholville Telephone Company, Inc. have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Nicholville Telephone Company, 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 for the term of an underlying agreement.

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.

(09-01816SP1)

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

Interconnection of the Networks between Time Warner ResCom and Middleburgh Tele. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00008-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 Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Middleburgh Telephone Company executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Middleburgh Tele. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Middleburgh Tele.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Middleburgh Telephone Company have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Middleburgh Telephone Company 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 for the term of an underlying agreement.

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.

(09-01817SP1)

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

Interconnection of the Networks between Time Warner ResCom and Empire Tele. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00009-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 Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Empire Telephone Corporation executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Empire Tele. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Empire Tele.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Empire Telephone Corporation have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Empire Telephone Corporation 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 for the term of an underlying agreement.

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.

(09-01818SP1)

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

Interconnection of the Networks between Time Warner ResCom and Dunkirk/Fredonia for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00010-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Dunkirk and Fredonia Telephone Company executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Dunkirk/Fredonia for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Dunkirk/Fredonia.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Dunkirk and Fredonia Telephone Company have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Dunkirk and Fredonia Telephone Company 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 for the term of an underlying agreement.

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.

(09-01819SP1)

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

Interconnection of the Networks between Time Warner ResCom and Delhi Telephone for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00011-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Delhi Telephone Company executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Delhi Telephone for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Delhi Telephone.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Delhi Telephone Company have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Delhi Telephone Company 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 for the term of an underlying agreement.

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.

(09-01820SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Time Warner ResCom and Crown Point for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00012-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Crown Point Telephone Corporation executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Crown Point for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Crown Point.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Crown Point Telephone Corporation have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Crown Point Telephone Corporation 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 for the term of an underlying agreement.

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.

(09-01821SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Time Warner ResCom and Chazy/Westport for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00013-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Chazy and Westport Telephone Corporation executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Chazy/Westport for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Chazy/ Westport.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Chazy and Westport Telephone Corporation have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Chazy and Westport Telephone Corporation 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 for the term of an underlying agreement.

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.

(09-01822SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of the Networks between Time Warner ResCom and Champlain Tele. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00014-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Champlain Telephone Company, Inc. executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Champlain Tele. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Champlain Tele.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Champlain Telephone Company, Inc. have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Champlain Telephone Company, 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 for the term of an underlying agreement.

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.

(09-01823SP1)

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

Interconnection of the Networks between Time Warner ResCom and Cassadaga Tele. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00015-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Cassadaga Telephone Corporation executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Cassadaga Tele. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Cassadaga Tele.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Cassadaga Telephone Corporation have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Cassadaga Telephone Corporation 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 for the term of an underlying agreement.

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.

(09-01824SP1)

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

Interconnection of the Networks between Time Warner ResCom and Armstrong Tele. for Local Exchange Service and Exchange Access

I.D. No. PSC-44-09-00016-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Time Warner ResCom of New York, LLC for approval of an Interconnection Agreement with Armstrong Telephone Company of New York executed on September 9, 2009.

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

Subject: Interconnection of the networks between Time Warner ResCom and Armstrong Tele. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Time Warner ResCom and Armstrong Tele.

Substance of proposed rule: Time Warner ResCom of New York, LLC and Armstrong Telephone Company of New York have reached a negotiated agreement whereby Time Warner ResCom of New York, LLC and Armstrong Telephone Company of New York 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 for the term of an underlying agreement.

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.

(09-01825SP1)

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

Whether to Permit the Use of the General Electric Bushing Current Transformer Model 17-1200-14 in Revenue Billing Accounts

I.D. No. PSC-44-09-00017-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by General Electric for the approval to use the General Electric Bushing Current Transformer Model 17-1200-14 substation applications.

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

Subject: Whether to permit the use of the General Electric Bushing Current Transformer Model 17-1200-14 in revenue billing accounts.

Purpose: Pursuant to 16 NYCRR Part 93, is necessary to permit electric utilities in New York State to use the GE Current Transformer.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by General Electric, to use the General Electric Bushing Current Transformer Model 17-1200-14 used to monitor electric flow through electric substations.

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, Three Empire State Plaza,

Albany, New York 10007, (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, Three Empire State Plaza, Albany, NY 10007, (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-E-0756SP1)

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

Disposition of Property Tax Refunds Received by Utilities

I.D. No. PSC-44-09-00018-P

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

Proposed Action: The Commission is considering the petition of Long Island Water Corporation regarding the disposition of a property tax refund received from Nassau County after a successful challenge to its tax assessment for several tax years.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of property tax refunds received by utilities.

Purpose: To determine the disposition of property tax refunds.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the request of Long Island Water Corporation (company) for the disposition of a property tax refund it has received as settlement of a challenge to its Nassau County tax assessment. The company challenged its assessment for several years of taxes and the \$3.1 million represents the final payment by Nassau County. The company proposes that certain costs related to the tax challenge be deducted and that its shareholders retain a percentage of the net amount as reward for the company's efforts in obtaining the refund. The remainder of the refund would be returned to ratepayers in a manner to be determined.

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-0581SP1)

**Susquehanna River Basin
Commission**

INFORMATION NOTICE

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: September 1, 2009, through September 30, 2009.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(f) for the time period specified above:

Approvals By Rule Issued:

1. J-W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C-10H, ABR-20090901, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: September 1, 2009.

2. Ultra Resources, Inc., Pad ID: Kjelgaard Pad, ABR-20090902, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 1, 2009.

3. Ultra Resources, Inc., Pad ID: T Pierson Pad, ABR-20090903, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 1, 2009.

4. Chesapeake Appalachia, LLC, Pad ID: Bonnie, ABR-20090904, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

5. Chesapeake Appalachia, LLC, Pad ID: Hunsinger, ABR-20090905, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

6. Chesapeake Appalachia, LLC, Pad ID: Martin, ABR-20090906, Granville Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

7. Chesapeake Appalachia, LLC, Pad ID: Farr, ABR-20090907, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

8. Alta Operating Company, LLC, Pad ID: Turner Pad Site, ABR-20090403.1, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 2, 2009.

9. Alta Operating Company, LLC, Pad ID: Fiondi Pad Site, ABR-20090404.1, Middletown Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 2, 2009.

10. Anadarko E&P Company, LP, Pad ID: C.O.P. Tract 343 Pad C, ABR-20090908, Noyes Township, Clinton County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 3, 2009.

11. East Resources, Inc., Pad ID: Becker 404, ABR-20090909, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

12. East Resources, Inc., Pad ID: White 262-1H, ABR-20090910, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

13. East Resources, Inc., Pad ID: Stefanowich 269-1H, ABR-20090911, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

14. East Resources, Inc., Pad ID: Knight 271-1H, ABR-20090912, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

15. Chesapeake Appalachia, LLC, Pad ID: Sharer, ABR-20090913, Stevens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 8, 2009.

16. East Resources, Inc., Pad ID: Empson 235-1H, ABR-20090914, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

17. Alta Operating Company, LLC, Pad ID: Knosky Pad Site, ABR-20090915, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 8, 2009.

18. Alta Operating Company, LLC, Pad ID: Carty Pad Site, ABR-20090916, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 8, 2009.

19. EOG Resources, Inc., Pad ID: PHC 23H/24H, ABR-20090917, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: September 8, 2009.

20. EOG Resources, Inc., Pad ID: PHC 28H/29H, ABR-20090918, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: September 8, 2009.

21. East Resources, Inc., Pad ID: Bowers 408, ABR-20090919, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 9, 2009.

22. Chief Oil & Gas, LLC, Pad ID: Falk Unit #1H, ABR-20090920,

Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 9, 2009.

Deputy Director.

23. Chief Oil & Gas, LLC, Pad ID: Spotts Unit Drilling Pad #1, ABR-20090921, Mifflin Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

24. Chief Oil & Gas, LLC, Pad ID: Kensinger Unit Drilling Pad #1, ABR-20090922, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

25. Chief Oil & Gas, LLC, Pad ID: Maguire Unit Drilling Pad #1, ABR-20090923, Watson Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

26. Chief Oil & Gas, LLC, Pad ID: Stroble Unit Drilling Pad #1, ABR-20090924, Mifflin Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

27. Chief Oil & Gas, LLC, Pad ID: Poor Shot Unit Drilling Pad #1, ABR-20090925, Anthony Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

28. Pennsylvania General Energy Company, LLC; Pad ID: Pine Hill 1941 A-B, ABR-20090926, Eulalia Township, Potter County, Pa.; Consumptive Use of up to 4.900 mgd; Approval Date: September 10, 2009.

29. Anadarko E&P Company, LP, Pad ID: COP Tr 244 #1000H, ABR-20090927, Rush Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 15, 2009.

30. Anadarko E&P Company, LP, Pad ID: COP Tr 244 #1001H and #1002H, ABR-20090928, Rush Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 15, 2009.

31. Pennsylvania General Energy Company, LLC, Pad ID: Pine Hill West B Pad, ABR-20090929, Sylvania Township, Potter County, Pa.; Consumptive Use of up to 4.900 mgd; Approval Date: September 17, 2009.

32. Cabot Oil & Gas Corporation, Pad ID: ShieldsG P1, ABR-20090930, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 18, 2009.

33. Cabot Oil & Gas Corporation, Pad ID: HunsingerA P2, ABR-20090931, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 18, 2009.

34. Fortuna Energy, Inc., Pad ID: DCNR 587 Pad #17, ABR-20090932, Ward Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 18, 2009.

35. Seneca Resources Corporation, Pad ID: D.M. Pino Pad H, ABR-20090933, Covington Township, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 19, 2009.

36. Seneca Resources Corporation, Pad ID: Marvin 1V Pad, ABR-20090934, Covington Township, Tioga County, Pa.; Consumptive Use of up to 0.500 mgd; Approval Date: September 19, 2009.

37. East Resources, Inc., Pad ID: Sherman 234-1H, ABR-20090935, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 21, 2009.

38. East Resources, Inc., Pad ID: Cole 236, ABR-20090936, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 21, 2009.

39. Cabot Oil & Gas Corporation, Pad ID: Hoover P1, ABR-20090937; Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 22, 2009.

40. Alta Operating Company, LLC, Pad ID: Micks Pad Site, ABR-20090938, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 22, 2009.

41. Chief Oil & Gas, LLC, Pad ID: Chase A-1H Drilling Pad #1, ABR-20090939, Boggs Township, Clearfield County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 23, 2009.

42. Chesapeake Appalachia, LLC, Pad ID: Welles 2, ABR-20090940, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 25, 2009.

43. Stone Energy Corporation, Pad ID: Stang Well No. 1, ABR-20090941, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: September 25, 2009.

44. Stone Energy Corporation, Pad ID: Loomis Well No. 1, ABR-20090942, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: September 29, 2009.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: October 19, 2009.

Thomas W. Beauduy