RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM	-the abbreviation to identify the adopting agency
01	-the *State Register* issue number
96	-the year
00001	-the Department of State number, assigned upon receipt of notice.
E	-Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Opioid Treatment Services

I.D. No. ASA-34-10-00001-E
Filing No. 809
Filing Date: 2010-08-04
Effective Date: 2010-08-04

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

Action taken: Repeal of Part 828 and addition of new Part 828 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.21, 19.40, 32.01, 32.05, 32.07 and 32.09

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

Specific reasons underlying the finding of necessity: 1. The regulation has not been changed substantially in 34 years and the treatment of opioid addiction has changed substantially over that period of time and recognizes and allows for advances in toxicology testing and pharmacology.

2. Federal regulations were promulgated 9 years ago and this regulation brings NYS more reflective of the Federal regulations.

Subject: Opioid Treatment Services.

Purpose: Bring the current practice of opioid treatment services within NYS and to bring the regulation into alignment with Federal regulations.

Substance of emergency rule: The proposed regulations would revise Section 828 of the Mental Hygiene law (Requirements for the operation of chemotherapy substance abuse programs) to allow for changes in addiction treatment services as the last changes to the regulation occurred under DSAS as Part 1040 in 1984 as 1040.21. It was then renumbered as Part 828 and moved to OASAS in 2000, with no significant changes. The methadone regulation has existed for 24 years without change even though the Federal rules of opioid treatment have changed due to advancements and evidence based practice.

Changes for Opioid Treatment Programs

- Conform OASAS regulations to federal regulations (42 CFR Part 8) regarding certification of opioid treatment programs (OTP).
- Adds regulations related to buprenorphine (methadone alternative) treatment, removing an obstacle to physicians to administer buprenorphine in OTPs where clients may receive supportive services.
- Provides for opioid medical maintenance (OMM), pursuant to federal waiver, for certain qualified opioid patients and providers.
- Provides guidelines for certified providers to provide services at additional locations.
- Requires medical directors to become certified in an area of addiction medicine.
- Requires testing for Hepatitis and makes testing for STDs optional.
- Increases flexibility in toxicology testing.
- No longer requires OASAS approval for methadone dosage increases above 200 milligrams.
- Recognizes that treatment for opioid addiction may be provided in a residential or in-patient setting and makes provisions for regulation of such services.
- Greater consistency between federal and state regulations will benefit both providers and clients.
- Adds language that states only clients with a primary diagnosis of opioid addiction may be admitted to an OTP.
- Annual physical still required however at clinics discretion patient may be able to go to their private MD.
- New language added for transfer patients.
- More flexibility for counselor to patient staffing ratios.
- Greater flexibility in providing patients with take home medication and removes agency approval on a one-time basis for up to 30 days take home dose.
- Adds recall to reduce diversion.
- Defines role of security guards at the OTP.
- Defines aftercare.
- States specialized services that are not defined by regulation must be approved by OASAS prior to implementation.
- States providers must establish a community relations policy and committee.
- Providers must establish a quality improvement policy.
- Requires 50% of the counseling staff to be CASAC or CASAC-T within four years.

This regulation was originally published in the NYS Register in December 2008. Many providers commented and OASAS responded. Here are the additional changes to the regulation.

- Adds language for approved medication which provides programs

the ability to use methadone, buprenorphine or any other agent approved for opioid treatment by federal authorities.

• Provides for opioid medical maintenance (OMM), pursuant to federal waiver, for certain qualified opioid patients and providers.

• Adds language for health care coordinator which is consistent with other regulations in the Part.

• Changed language for nurse/patient ratio back to prior language as no change was intended.

• Continuing care treatment is limited to four months, where after a client who requires more counseling should be referred to another modality.

• Increases flexibility in toxicology testing.

• Multidisciplinary team language changed to be consistent with our regulations in the Part.

• Mandatory use of Locatdr form lifted.

• Allows for prescribing professionals to perform medical services except for initial dose and medical maintenance.

• Clarified definitions for taper and detox.

• Clarified language for transfer patients.

• Recognizes that treatment for opioid addiction may be provided in a residential or in-patient setting and makes provisions for regulation of such services.

• Changed the language and now allows an individual who voluntarily completed treatment to return to treatment without confirming current opioid dependence of two years and instead can accept them with one year.

A primary goal of the proposed amendments is to improve treatment cost effectiveness in all opioid treatment programs. The proposed amendments accomplish this in several ways. OTPs flexibility in toxicology testing is expanded to permit the option of oral fluid testing which is less onerous to staff, more dignified for the patient, and allows several patients to be tested simultaneously. Increased toxicology testing will improve patient outcomes through early identification and appropriate counseling. Because fewer patients present with sexually transmitted disease (STD) testing for STD is no longer required, but can be completed as necessary for those patients who request testing or exhibit signs and symptoms. However, to protect the public, testing for Hepatitis is mandated but federal funding or local DOH funds are available for Hepatitis testing and vaccines to offset costs.

More efficient and cost-effective administration is also a goal of the proposed rule. OASAS does not expect to incur increased costs related to administering the new rule. OASAS will modify the review instrument currently used to evaluate OTPs and will provide additional technical assistance to OTPs, but this is not expected to increase agency costs because staff time currently needed to process individual and general regulatory waivers to current regulations will be decreased and can be allocated more efficiently.

Municipalities may recognize savings because the proposed regulation changes the number of years it may take a client to achieve a monthly reduced medication pick-up schedule for take home medications from four years to three years. Medicaid costs for visits and billing will be reduced because the patient goes to an OMM only once per month rather than weekly.

The proposed amendments will result in a reduction in paperwork for both OASAS and its certified providers. For example, the proposed regulations will reduce the number of individual patient exemptions and general waivers from current regulation, saving providers and the agency costly administrative time. An estimated monthly average of 10 requests for waivers would be eliminated. The proposed regulation allows more flexibility in take home medication and clinic schedule changes, areas of the highest number of individual patient exemptions.

The proposed regulation removes a requirement for OASAS approval for methadone dosage increases above 200 milligrams based on review of several available studies. In January 2007, 103 of 115 certified clinics requested a waiver from OASAS regarding prior OASAS approval for methadone dosage increases; granting the waiver resulted in 114 fewer individual patient exemptions regarding dosage increases during 2007. The proposed draft regulations would eliminate the need for providers to submit this waiver renewal upon recertification.

Federal regulations set the minimum standards and preserve states' authority to regulate OTPs and determine appropriate additional regulations. New York state has many unique concerns because the state has more OTP clinics and patients (115 and 39,314 respectively) than any of the other 44 states and territories providing opioid treatment. In New York City, multiple clinics serving thousands of patients may exist within blocks of each other leading to community resistance and public opposition to community based treatment programs. As a result, New York state regulations tend to be more stringent than federal standards.

OASAS solicited comments on the proposed regulations and possible alternatives from a cross-section of New York's upstate and downstate treatment provider community, as well as urban and rural programs. OASAS utilized a statewide coalition group, the Committee of Methadone Program Administrators (COMPA), to distribute the proposed regulation to all of its members and to collect comments. All comments received were reviewed and incorporated wherever appropriate. The proposed regulations were also shared with the National Alliance of Methadone Advocates (NAMA), New York States Council of Local Mental Hygiene Directors, New York State's Advisory Council, and Alcoholism and Substance Abuse Providers of New York State (ASAP).

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 1, 2010.

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

Summary of Regulatory Impact Statement

The proposed Opioid Treatment for Addiction regulation was originally submitted for public review and comment within the field and then publicly in the NYS Department of State Register in December 2008. Prior to these proposed changes the last amendment to the regulation occurred under DSAS as Part 1040 in 1984 as 1040.21. It was then renumbered as Part 828 and moved to OASAS in 2000, with no significant changes. The methadone regulation has existed for 26 years without change even though the Code of Federal Regulations, title 42, Part 8 of opioid treatment have changed due to advancements and evidence based practice. Therefore the impact of the proposal will more closely align state regulations with federal rules that were promulgated in 2001, that changed due to advancements and evidence based practice.

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

Proposed changes recognize opioid addiction as a chronic illness that can be treated with certain medications (medication assisted treatment) in conjunction with supportive services (counseling, treatment for co-occurring disorders, and vocational rehabilitation).

1. Statutory Authority:

Mental Hygiene Law (MHL) § 19.07(e) authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (OASAS) to ensure that persons who abuse or are dependent on alcohol and/or substances and their families receive effective and high quality care and treatment.

MHL § 19.09(b) authorizes the Commissioner to adopt regulations to implement any matter under his or her jurisdiction.

MHL § 19.16 requires the commissioner to establish and maintain, either directly or through contract, a central registry for purposes of preventing multiple enrollment in methadone programs.

MHL § 19.40 authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

MHL § 19.15(a) bestows upon the Commissioner the responsibility

for promoting, establishing, coordinating, and conducting programs for the prevention, diagnosis, treatment, aftercare, rehabilitation, and control in the field of chemical abuse or dependence.

MHL § 19.21 (b) requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

MHL § 19.21(d) requires the Commissioner to promulgate regulations to evaluate chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

MHL § 32.01 authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by MHL article 32.

MHL § 32.05 requires providers to obtain an operating certificate issued by the Commissioner in order to operate chemical dependence services including but not limited to methadone.

MHL § 32.09(b) gives the Commissioner the power to withhold an operating certificate for a Methadone provider until statutory requirements are satisfied.

2. Legislative Objectives:

Article 32 of the Mental Hygiene Law (§ 32.01) enables the Commissioner to regulate and assure consistent high quality of services within the state for persons suffering from chemical abuse or dependence, their families and significant others, and those at risk of becoming chemical abusers. 14 NYCRR Part 828 establishes requirements for chemotherapy substance abuse treatment (methadone). Revising policy and procedures with regard to opioid treatment, will establish a standard for all facilities, which is in the best interest of the patient, and will assist opioid treatment programs to provide better health care services and recovery from opioid dependency.

3. Needs and Benefits:

The proposed amendments advance the goals of guaranteeing patients the best treatment in a manner that is cost effective and accountable. The proposed amendments are needed because of developments inside and outside the agency including: (1) issues identified during an on-going broad-based dialogue with OASAS certified providers and affiliated stakeholders to define a ''gold standard'' for treatment and/or identify ''best practices'' for quality patient-centered care; (2) the need to conform regulations to updated federal standards related to opioid treatment (42 CFR Part 8), and; (3) evolution of social attitudes toward greater acceptance of persons recovering from chemical dependence.

Part 828 conforms state and federal regulations affecting approximately 36% (40,000) of addiction patients in New York State. Opioid Treatment Program (OTP) physicians may administer buprenorphine (methadone alternative) in an OTP where clients will receive additional beneficial services such as counseling, toxicology, and medical support. Opioid Medical Maintenance (OMM; pursuant to a federal waiver to select providers approved by OASAS) permits monthly dispensing in a physician's office for certain patients who do not need long-term counseling.

This regulation was originally published in the NYS Register in December 2008. Many providers responded and offered comments. Here are the resulting changes to the regulation.

- Adds regulations related to buprenorphine (methadone alternative) treatment, removing an obstacle to physicians to administer buprenorphine in OTPs where clients may receive supportive services.
- Provides for opioid medical maintenance (OMM), pursuant to federal waiver, for certain qualified opioid patients and providers.
- Adds language for health care coordinator which is consistent with other regulations in the Part.
- Changed language for nurse/patient ratio back to prior language as no change was intended.
- Continuing care treatment is limited to four months, where after a client who requires more counseling should be referred to another modality.
- Increases flexibility in toxicology testing.
- Multidisciplinary team language changed to be consistent with our regulations in the Part.
- Mandatory use of Locatdr lifted.
- Allows for prescribing professionals to perform medical services except for initial dose and medical maintenance.
- Clarified definitions for taper and detoxification.
- Clarified language for transfer patients.
- Recognizes that treatment for opioid addiction may be provided in a residential or in-patient setting and makes provisions for regulation of such services.
- Changed the language and now allows an individual who voluntarily completed treatment to return to treatment without confirming current opioid dependence of two years and instead can accept them with one year.

In addition, all technical issues such as lettering, grammar and punctuation were fixed where necessary.

4. Costs:

Additional costs, if any, are up-front, minimal, and offset by improved treatment outcomes, increased staff efficiency, and clearer compliance directives.

a. Costs to regulated parties:

Patients and service providers are regulated parties. Patients will not incur additional costs. Providers may incur minimal up-front costs associated with laboratory testing, training and/or hiring qualified health professionals, but costs will be offset by improved outcomes, increased staff efficiency, and clearer compliance directives.

The proposed toxicology regulations are more cost effective: optional oral fluid testing is less onerous to staff, more dignified for the patient, and can address several patients simultaneously. Providers will know when patients relapse to deliver appropriate services for improved outcomes. The proposed regulation no longer mandates sexually transmitted disease (STD) testing but recommends testing to be completed as necessary for patients who request testing or exhibit signs and symptoms. However, to protect the public, testing for Hepatitis is mandated because Hepatitis C has become epidemic; federal and DOH funds offset costs of testing and vaccines.

OASAS proposes requiring medical directors hired after the promulgation of the new rule to be certified in Addiction Medicine. All medical directors must obtain a board certification in one of three types of addiction medicine subspecialties and become buprenorphine certified within four months of employment (completion of an 8-hour course). Physicians may be hired on a probationary basis with four years to obtain certification.

The regulation requires fifty percent of staff to be Qualified Health Professionals (QHPs). Patients in OTPs with multiple medical, psychiatric and psychosocial barriers require specially trained staff. Most OASAS outpatient programs already meet or exceed this requirement because Credentialed Alcohol and Substance Abuse Counselors (CASAC) trainees are counted towards the 50 percent requirement. The proposed amendments for OTPs include a two year implementation to reach the 50% level plus flexibility in medication administration, toxicology and staffing configurations.

Providers will not incur any additional costs for materials. Requirements for OTP quality assurance are already mandated under Federal standards.

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

OASAS does not anticipate increased administrative costs. OASAS will modify the review instrument currently used to evaluate OTPs and provide technical assistance to OTPs. Staff time needed to process individual and general regulatory waivers to current regulations will be decreased and such time can be allocated more efficiently.

Counties, cities, towns or local districts will incur no additional costs. Municipalities may realize savings because the regulation reduces (four years to three years) the time for an OTP client to achieve a monthly medication pick-up schedule; Medicaid costs will be reduced because the patient goes to an OMM monthly rather than weekly.

5. Local Government Mandates:

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

6. Paperwork / Reporting:

Paperwork will be reduced by reducing the requests for patient exemptions and regulatory waivers (average of 10 per month). The requirement that OASAS approve methadone dosage increases above 200 milligrams is removed. Studies show that adequate dosage varies among patients depending on metabolism and interaction with concurrent medications, yet inadequate methadone dosing is common (NIH, 1998; Marion, 2005). Dosing flexibility can be safe and improves treatment retention (Tenore, 2004; Maddux, et al, 1997). In January 2007, 103 of 115 OASAS clinics requested a waiver for dosage increases; granting the waiver resulted in 114 fewer individual patient exemptions. The proposed regulation eliminates the necessity of submitting this waiver renewal upon recertification.

7. Duplications:

There are no duplications of other state or federal requirements.

8. Alternatives:

The only other alternative is to keep the existing regulation in place. This would be detrimental to both the opioid treatment providers and patients being served. . In an effort to elicit comments on the proposed regulations and possible alternatives, these amendments were shared with New York's treatment provider community, representing a cross-section of upstate and downstate, as well as urban and rural programs. OASAS used a statewide coalition group, the Committee of Methadone Program Administrators (COMPA), to facilitate distribution of this proposed regulation to all of its members and have collected comments. The regulations has been published, more comments were received, reviewed and more changes were made. Additionally, these regulations were also shared with the National Alliance of Methadone Advocates (NAMA), New York State's Council of Local Mental Hygiene Directors, New York State's Advisory Council, and Alcoholism and Substance Abuse Providers of NYS (ASAP).

9. Federal Standards:

Federal regulations set minimum standards for OTPs. New York's take-home regulations are more stringent than federal standards; New York has more OTP clinics and patients (115 and 39,314 respectively) than any of the other states and territories providing opioid treatment. Multiple New York City clinics serve thousands of patients within blocks of each other and often face community resistance.

Methadone diversion and related mortality is a concern because of the number of clinics and a substantial black market (Bell & Zador, 2000, Breslin & Malone, 2006, & Lewis, 1997). Regulations addressing diversion limit patients' receipt of take-home medication (minimum two years of treatment and additional criteria to receive a 30 day take-home supply). The proposed regulation seeks to reduce diversion yet balance patients' ease of access by increasing testing frequency and adding routine ''call backs'' for patients with take home doses (Varenbut, et.al, 2007). Studies show benefits to take home options: improves treatment retention, attracts new patients, rewards patients' abstinence or treatment compliance, and improves patient quality of life (Ritter, et al, 2005). Most methadone-related deaths linked to diversion involved patients in pain management centers, not OTPs (Center for Substance Abuse Treatment, 2004; Cicero, 2005).

10. Compliance Schedule:

Providers may comply with the proposed changes upon adoption. Full implementation of this Part will be completed within one year of adoption with the exception of phased-in staffing requirements.

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The Center of Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services.

Administration (SAMHSA) within the US Department of Health and Human Services (HHS).

Regulatory Flexibility Analysis

Effect of the Rule: The proposed Part 828 will impact certified and/or funded providers. It is expected that the development of opioid treatment programs will require providers to amend some of their policies and procedures in their treatment modality. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking medication assisted treatment for opioid dependency due to less restrictive procedures for medication assisted treatment. As a result of patients receiving these services, local governments may see a decrease in services associated with active illicit drug use such as arrests and emergency room visits. Also, local governments and districts will not be affected because any nominal increase in cost will be offset by better patient outcomes.

Compliance Requirements: It is expected that there will be some changes in compliance requirements. However, providers are equipped to make the changes which will enhance patient care. Also, providers are already required by federal statutes to provide certain services such as utilization review, so it is not expected that this regulation, which provides additional guidance on good utilization review practices, will have additional costs.

Professional Services: While it is expected that programs may require additional professional services the impact is nominal because over half of the current opioid treatment providers already meet the criteria set forth in the regulation for qualified health professionals and the regulation allows for phased implementation over four years.

Compliance Costs: Some programs may need additional formally trained staff to meet the proposed requirements; however, new CASAC credentialing rules, acceptance of CASAC trainees and phased implementation will decrease any barriers for compliance. Laboratory fees may increase; however, existing reimbursement fees should be sufficient to meet these requirements.

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

Minimizing Adverse Impact: Part 828 has been carefully reviewed

to ensure minimum adverse impact to providers. Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare of New York, The Federal Center for Substance Abuse Treatment, The Federal Drug Enforcement Agency, the OASAS Methadone Transformation Team, the Council of Local Mental Hygiene Directors and the Advisory Council on Alcoholism and Substance Abuse Services and approximately 50 opioid treatment programs were given the opportunity to comment on this proposal. Any impact this rule may have on small businesses and the administration of state or local governments and agencies will either be a positive impact or the nominal costs and compliance are small and will be absorbed into the already existing economic structure. The positive impact for our patients and our health care system, out weigh any potential minimal costs.

Small Business and Local Government Participation: The proposed regulations were shared with New York's treatment provider community including, Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare of New York, The Federal Center for Substance Abuse Treatment, The Federal Drug Enforcement Agency, the OASAS Methadone Transformation Team, the Council of Local Mental Hygiene Directors and the Advisory Council on Alcoholism and Substance Abuse Services.

Rural Area Flexibility Analysis

A rural flexibility analysis is not provided since these proposed regulations would have no adverse impact on public or private entities in rural areas. The majority of opioid treatment providers are located in NYC. There are a few others upstate, but they are in cities, of various sizes. There are only three providers located in Ulster, Broome and Montgomery which may be considered a rural area however they are in towns where the density is greater than 150 people per square mile. The compliance, recordkeeping and paperwork requirements are the minimum needed to insure compliance with state and federal requirements and quality patient care.

Job Impact Statement

The implementation of Part 828 will have an impact on jobs in that it will require 50% of the staff at an OTP to be a qualified health professional which is in alignment with other NYS treatment regulations (eg. Part 822). The hiring of formally trained staff will improve patient outcomes. At the present time OASAS has determined that most programs already meet or exceed this requirement. In addition, the regulation allows for CASAC trainees to be counted towards the 50% of QHP on staff and there is a phased implementation over the course of four (4) years. Finally, the change in CASAC testing requirements should increase the number of CASAC's in NYS. So while the current staff may need to enter formal education programs in order to maintain their employment this will help create new professional staff in New York State. This regulation will not adversely impact jobs outside of the agency.

Department of Audit and Control

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Submission and Approval of State Authority Contracts to the Comptroller

I.D. No. AAC-09-10-00013-RP

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

Proposed Action: Addition of Part 206 to Title 2 NYCRR.

Statutory authority: State Constitution, art. X, section 5; State Finance Law, section 8(14); Public Authorities Law, section 2879-a

Subject: Submission and approval of State Authority Contracts to the Comptroller.

Purpose: To set forth standards and procedures for submission and approval of State Authority contracts to the Comptroller.

Text of revised rule: Proposed Part 206 is added to Title 2 of NYCRR as follows:

PART 206

Comptroller Approval of Contracts Made by State Authorities.

§ 206.1 Purpose. (a) The purpose of this Part is to set forth: (1) the standards for the Comptroller's determination of state authority contracts and contract amendments subject to the Comptroller's approval; (2) the criteria for the Comptroller's approval of such contracts and contract amendments; (3) the responsibilities of state authorities with respect to the filing of exempt contracts and exempt contract amendments, certain eligible contracts and certain eligible contract amendments as defined in this Part; and (4) the procedural requirements for overall compliance with section two thousand eight hundred seventy nine-a of the Public Authorities Law.

(b) Nothing contained in this Part shall diminish, or in any way adversely affect, the Comptroller's existing authority to approve state authority contracts where such approval is otherwise required, or provided for, by law or by resolution of a state authority, including, but not limited to, contracts made ''for'' the State by a state authority. A contract is made ''for'' the State by a state authority where the state authority is entering into a contract with a third party, but the primary role of the state authority is to act on behalf of the State or a state agency. Such third-party contracts are contracts for the State and are subject to the Comptroller's approval under section one hundred twelve of the State Finance Law notwithstanding any of the thresholds or criteria contained in this Part.

§ 206.2 Definitions. For purposes of this Part:

(a) Competitive procurement shall mean a procurement where a state authority has:

(1)(i) published notice of the contract opportunity consistent with any statutory publication requirement including, but not limited to, article four-c of the Economic Development Law, or, where there is no express statutory requirement for published notice, in the procurement opportunities newsletter or another newspaper, journal or periodical which is reasonably designed to give notice of the contract opportunity to all offerers capable of providing the requisite product, service or work to be performed; and further that such notice, wherever published, is reasonably designed to solicit bids, proposals or offers from all qualified offerers in response thereto; or

(ii) provided notice of the contract opportunity by soliciting bids, proposals or offers through some other method expressly authorized by statute, where such statute has deemed such other method to be competitive; and

(2) awarded the contract as a result of a balanced and fair method of evaluation and selection developed before the receipt of offers or bids.

(b) Contract shall mean any written agreement including, but not limited to: any agreement for the acquisition or sale of goods or services of any kind; public work, construction, alterations, or improvements to public facilities; grant contracts; employment contracts; revenue or concession contracts; the exchange of personal or real property; the exchange of services; or any combination thereof. For purposes of this Part, a purchase order shall be deemed to be a contract unless the purchase order is issued pursuant to:

(1) an existing state authority contract; or

(2) an Office of General Services centralized contract where neither the contract nor the relevant procurement guidelines require a mini-bid or similar competitive process.

(c) Eligible contract shall mean any contract executed by a state authority on or after March 1, 2010, other than an exempt contract, where the aggregate consideration proposed for exchange (including all reasonably anticipated renewals and amendments) may reasonably be valued in excess of one million dollars and such contract either: (1) shall be paid in whole or in part with monies appropriated by the State, either directly to a state authority or to a state agency which pays the money to a state authority; or (2) was or shall be awarded on a single source basis, a sole source basis or pursuant to any other method of procurement that is not a competitive procurement. For purposes of determining the value of a contract that has no term or is perpetual in nature, the contract shall be deemed to have a term of five years.

(d) Eligible contract amendment shall mean:

(1) any modification to an eligible contract; or

(2) any modification other than an exempt contract amendment to a contract executed by a state authority where such modification was executed on or after March 1, 2010, and where the aggregate consideration under the contract as amended may reasonably be valued in excess of one million dollars and:

(i) the contract as amended will be paid in whole or in part with monies appropriated by the State, either directly to a state authority or to a state agency which pays the money to a state authority; or

(ii) the contract was originally awarded on a noncompetitive basis; or

(iii) the contract was originally awarded on the basis of a compet-

itive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

(e) Executed or execution shall mean that the contract or contract amendment has been signed as required by the contractor and the state authority.

(f) Exempt contract shall mean any contract or contract amendment, executed by a state authority on or after March 1, 2010, that would otherwise be an eligible contract or eligible contract amendment, but is exempt pursuant to subdivision three of section two thousand eight hundred seventy nine-a of the Public Authorities Law because it is:

(1) for the issuance of commercial paper or bonded indebtedness including, but not limited to: bond purchase agreements, standby bond purchase agreements, letters of credit, firm remarketing agreements, forward purchase agreements, revolving credit agreements and other similar liquidity facility agreements, broker-dealer agreements, remarketing agent agreements, auction agent agreements, interest rate swaps and other similar hedging agreements; provided, however, that this category of exempt contracts shall not include:

(i) contracts with the state providing for the payment of debt service subject to an appropriation;

(ii) professional or banking services agreements such as bond counsel agreements, financial advisor agreements and trustee agreements, and

(iii) custodial service agreements;

(2) entered into by an entity established under article ten-c of the Public Authorities Law and is for:

(i) projects approved by the Department of Health or the Public Health Council in accordance with article twenty-eight, thirty-six or forty of the Public Health Law or article seven of the Social Services Law;

(ii) projects approved by the Office of Mental Health, the Office for People with Disabilities, or the Office of Alcoholism and Substance Abuse Services in accordance with article sixteen, thirty-one or thirty-two of the Mental Hygiene Law;

(iii) services, affiliations or joint ventures for the provision or administration of health care services or scientific research;

(iv) payment for direct health care services or goods used in the provision of health care services; or

(v) participation in group purchasing arrangements;

(3) for the procurement of goods, services or both goods and services to meet emergencies arising from unforeseen causes or to effect repairs to critical infrastructure that are necessary to avoid a delay in the delivery of critical services that could compromise the public welfare;

(4) for the purchase or sale of energy, electricity or ancillary services made by an authority on a recognized market for the goods, services or commodities in question in accordance with standard terms and conditions of purchase or sale at a market price;

(5) for the purchase, sale or delivery of power or energy, fuel, costs and services ancillary thereto, or financial products related thereto, with a term of less than five years; or

(6) for the sale or delivery of power or energy and costs and services ancillary thereto for economic development purposes pursuant to title one of article five of the Public Authorities Law or article six of the Economic Development Law.

(g) Exempt Contract Amendment shall mean a modification to any contract where such modification would otherwise be an eligible contract amendment, but is for an exempt purpose as defined in subparagraphs (1) through (6) of paragraph (f) of this section.

(h) Monies appropriated by the state shall mean:

(1) monies from the state treasury or any of its funds, or any of the funds under its management pursuant to law; or

(2) the proceeds of bonds, where such bonds shall be paid in whole or in part with monies from the state treasury or any of its funds, or any of the funds under its management pursuant to law.

(i) Procurement record shall mean documentation of the decisions made and the approach taken by the state authority in the procurement process.

(j) Single source shall mean a procurement in which although two or more offerers can supply the required goods or services, the state authority, upon written findings setting forth the material and substantial reasons therefore, may award a contract or amendment to a contract to one offerer over the other.

(k) Sole source shall mean a procurement in which only one offerer is capable of supplying the required goods or services.

(l) State authority shall mean a public authority or public benefit corporation created by or existing under any law of the state of New York, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation, where one or more members serve by virtue of holding a civil office of the state, or where one or more members are appointed by the governor except where all such appointments by the governor occur specifically upon the recommendation of a local government official.

(m) State Authorities Contract Submission Manual shall mean guidelines for state authorities for contract submission, contract reporting or other contract matters, created by the Office of the State Comptroller and updated as necessary.

(n) Subsidiary shall mean a corporate body or company:

(1) having more than half of its voting shares owned or held by a state authority; or

(2) having a majority of its directors, trustees or members in common with the directors, trustees or members of a state authority or as designees of a state authority.

(o) Written determination shall mean notification provided in writing either in paper or electronic format of the Comptroller's approval or disapproval of any contract submitted for approval by a state authority.

(p) Written notice shall mean notification provided in writing either in paper or electronic format.

§ 206.3 Annual Reporting Requirement for Eligible Contracts and Eligible Contract Amendments.

(a) No later than 30 days before the end of the state authority's fiscal year, every state authority shall submit to the Office of the State Comptroller a report, in such form as prescribed by the Comptroller, which includes a description of every eligible contract and eligible contract amendment which the state authority reasonably anticipates entering into in the following fiscal year; provided, however, that the following eligible contract amendments shall not be included in such reports: (1) construction contract change orders that do not exceed $100,000; and (2) agreements to extend the duration of a contract for which there is no change in contract amount.

(b) The description for each anticipated eligible contract or eligible contract amendment specified in the report shall include, but not be limited to, the following elements: (1) the purpose of the eligible contract or eligible contract amendment; (2) the anticipated value of the eligible contract or eligible contract amendment; (3) whether it is anticipated that the contract will be awarded on a competitive basis, and, if not, the basis upon which the contract will be awarded; (4) the anticipated date for the release of the solicitation, if applicable, or execution of the eligible contract or eligible contract amendment; and (5) the source of funding for the eligible contract or eligible contract amendment.

(c)(1) The state authority shall provide written notice to the Office of the State Comptroller of:

(i) any eligible contract or eligible contract amendment not previously reported, together with all information required by paragraph (b) of this section;

(ii) any deletions from the list of eligible contracts or eligible contract amendments previously reported; or

(iii) any significant change in the information provided in the reports submitted by the state authority pursuant to this section. For purposes of this paragraph, a change shall be deemed significant if it affects the method of award of a contract or increases the anticipated value of a contract or contract amendment by more than 25 percent.

(2) Such written notice shall be submitted no later than thirty days after the state authority has identified the need for such addition or significant change. However, such notice must be given at least ten days prior to the release of a solicitation related to such addition or significant change in the event of a competitive procurement, or to the execution of a contract related to such addition or significant change in the event of a noncompetitive award.

(d) The Comptroller may waive the requirements of this section for any state authority that submits eligible contracts to the Comptroller for approval pursuant to an existing law or resolution.

§ 206.4 Determination of eligible contracts and eligible contract amendments subject to the Comptroller's approval.

(a)(1) The Comptroller shall periodically determine which eligible contracts and eligible contract amendments shall be subject to the Comptroller's approval.

(2) Once the Comptroller has determined that any eligible contract, eligible contract amendment, category of eligible contracts or category of eligible contract amendments shall be subject to approval by the Comptroller, the Comptroller shall provide written notice of such determination to the affected state authorities as soon as practicable.

(3) Such written notice shall include instructions for submitting any such contracts or contract amendments and the period of time during which the state authority is required to submit the contracts and/or contract amendments.

(4) Where a state authority that is subject to the publication requirements contained in article four-c of the Economic Development Law believes that an eligible contract, described in a written notice provided by the Comptroller pursuant to this section, is exempt from such requirements under paragraph (a) of subdivision one of section one hundred forty-four of the Economic Development Law, the state authority must obtain the Comptroller's approval for such exemption.

(b) The Comptroller's determination of which eligible contracts or eligible contract amendments shall be subject to his or her approval may include, but shall not be limited to, consideration of one or more the following criteria:

(1) number and dollar value of contracts entered into, or anticipated to be entered into, by the state authority;

(2) past practices of the state authority with respect to its contracting or procurement process as identified by audits performed by regulating bodies including, but not limited to, the Office of the State Comptroller;

(3) the types of contracts entered into by the state authority;

(4) the presence or absence of competition in the procurement process;

(5) the level of financial risk posed by the state authority's contracts;

(6) any potential liability for the State posed by the state authority's contracts;

(7) the content and adequacy of the state authority's existing procurement guidelines; and

(8) the state authority's compliance with the provisions in section 206.7 regarding the filing of exempt contracts, exempt contract amendments, certain eligible contracts and certain eligible contract amendments.

§ 206.5 Submission of eligible contracts or eligible contract amendments subject to the Comptroller's approval.

(a) Every state authority shall, upon execution of any eligible contract or eligible contract amendment described in a written notice issued pursuant to paragraph (a) of section 206.4, promptly submit to the Comptroller for approval each such eligible contract or eligible contract amendment for the duration stated in the notice, including all attachments and documents incorporated by reference therein, except where the Comptroller has determined that a complete copy is unnecessary and has so notified the state authority, along with the complete procurement record. A copy of all such eligible contracts and eligible contract amendments shall be retained on file with the Office of the State Comptroller. Such submission should conform to the guidelines set forth in the State Authorities Contract Manual. The Comptroller also reserves the right to request submission of additional materials that are relevant to the Comptroller's review and approval.

(b) For each eligible contract or eligible contract amendment described in a written notice issued pursuant to paragraph (a) of section 206.4 of this Part, the state authority shall include a certification in the procurement record that it has undertaken an affirmative review of the responsibility of the contractor and significant subcontractors known at the time of the contract award. Such review shall be designed to provide reasonable assurances that the contractor and significant subcontractors are responsible and shall be documented in the procurement record. For purposes of this paragraph, a subcontractor shall be deemed to be significant if: (1) the subcontractor's qualifications are a material factor in the award; or (2) the value of the subcontract will equal or exceed an amount as determined by the Comptroller, to be established in the State Authorities Contract Manual.

(c) Where the Comptroller has provided written notice pursuant to paragraph (a) of section 206.4, the state authority shall include in each eligible contract or eligible contract amendment described in such notice a clause providing that the contract or contract amendment is subject to the Comptroller's approval before such contract or contract amendment may become valid and enforceable.

(d) The Comptroller shall have ninety days to issue a written determination with respect to the approval or disapproval of each eligible contract or eligible contract amendment submitted for approval. Such ninety day period shall begin upon receipt of the eligible contract or eligible contract amendment, including all required documentation, by the Office of the State Comptroller. No eligible contract or eligible contract amendment submitted to the Comptroller shall become valid and enforceable until such eligible contract or eligible contract amendment has been approved by the Comptroller; provided, however, that if the Comptroller has not issued a written determination within the ninety day period, such eligible contract or eligible contract amendment shall become valid and enforceable without approval by the Comptroller. In the event that the state authority resubmits an eligible contract or eligible contract amendment previously disapproved by the Comptroller, the Comptroller shall have ninety days from the receipt of such resubmitted eligible contract or eligible contract amendment to issue a written determination.

(e) The Comptroller reserves the right to require state authorities to transmit all or part of the procurement record electronically according to standards developed by the Comptroller.

§ 206.6 Criteria for approval of an eligible contract or eligible contract amendment.

The Comptroller's determination as to whether to approve an eligible contract or eligible contract amendment submitted for approval shall include, but not be limited to, consideration of the following criteria:

(a) for all eligible contracts and eligible contract amendments: (1) compliance with all applicable laws; (2) the responsibility of the proposed contractor; (3) the reasonableness of the state authority's procurement procedures and, if applicable, compliance with such procedures; (4) the reasonableness of the result; (5) whether the contract contains a description of the scope of services, a specified term with a commencement and end date (except in the case of properly executed purchase orders) and is otherwise reasonable and acceptable as to form; and (6) whether the terms of the agreement are reasonable and in the best interests of the authority;

(b) for single source and sole source contracts, or any eligible contract or eligible contract amendment awarded pursuant to any other method of procurement that is not a competitive procurement: (1) the justification for not utilizing a competitive procurement; and (2) the reasonableness of the selection of the contractor, the cost and the terms of the eligible contract or eligible contract amendment. The procurement record for such eligible contracts or eligible contract amendments shall include: the justification for not using a competitive procurement; the basis for selecting the contractor, including the alternatives considered; and the basis upon which the state authority determined the cost was reasonable; and

(c) for competitive procurements: (1) the adequacy of the efforts made to provide notice of the contract opportunity; (2) the reasonableness of the product specifications, requirements or work to be performed; (3) the reasonableness of the methodology for evaluating bids, proposals or other offers; and (4) the state authority's fair application of the established methodology for evaluating bids, proposals or other offers. The procurement record for competitive contracts shall demonstrate a competitive field by providing, at a minimum, a clear statement of the required specifications or work to be performed, a fair and equal opportunity for offerers to submit responsive offers and a balanced and fair method of evaluation and selection.

§ 206.7 Filing requirements for exempt contracts, exempt contract amendments, certain eligible contracts and certain eligible contract amendments.

(a)(1) A state authority shall file with the Office of the State Comptroller: (i) a copy of any exempt contract; (ii) a copy of any exempt contract amendment; and (iii) an explanation of why such contract or contract amendment is exempt from the Comptroller's approval.

(2) When an exempt contract or an exempt contract amendment is executed in order to meet an emergency, the state authority shall document in the explanation the nature of the emergency giving rise to the procurement.

(3) Copies of such exempt contracts, exempt contract amendments and the related explanation shall be filed within sixty day after the execution of such exempt contract or exempt contract amendment.

(b)(1) A state authority shall also file with the Office of the State Comptroller a copy of any eligible contract or eligible contract amendment entered into by the state authority for which the Comptroller has not provided notice pursuant to paragraph (a) of section 206.4.

(2) Copies of such eligible contracts or eligible contract amendments executed on or after the date of the adoption of this Part shall be filed within sixty days after such execution.

(c) The filing of any contracts or contract amendments pursuant to this section shall conform to the guidelines for submission set forth in the State Authorities Contract Manual. In addition, where an eligible contract amendment or an exempt contract amendment filed pursuant to this section modifies a contract that was not previously filed with the Office of the State Comptroller, the state authority shall, at the Comptroller's request, provide a copy of the original contract and any prior amendments thereto. A state authority should file a complete copy of any contract or contract amendment pursuant to this section, including all attachments and documents incorporated by reference therein, except where the Comptroller has determined that a complete copy is unnecessary, is not legally required, and has so notified the state authority.

Revised rule compared with proposed rule: Substantial revisions were made in sections 206.2, 206.3, 206.5, 206.6 and 206.7.

Text of revised proposed rule and any required statements and analyses may be obtained from Jamie Elacqua, Esq., Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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

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

Revised Regulatory Impact Statement

1. Statutory Authority: New York State Constitution article X section 5 states that the ''accounts'' of public corporations shall be subject to the supervision of the state Comptroller. In addition, State Finance Law section 8 (14) authorizes the Comptroller to adopt rules and regulations in order to carry out the duties of his or her Office. Furthermore, Public Authorities Law section 2879-a specifically

requires the Comptroller to promulgate rules and regulations as necessary to carry out his or her responsibilities under this section. Public Authorities Law section 2879-a directs state authorities to submit certain contracts to the Comptroller for approval where the Comptroller determines that his or her constitutional supervision of the accounts of such state authorities requires such prior review and approval.

2. Legislative Objectives: These rules will further the goals and policies set forth in the newly added Public Authorities Law section 2879-a; specifically, to provide oversight of the operations and finances of state authorities, and to promote greater transparency and accountability in the way that state authorities conduct business.

3. Needs and Benefits: The rules are necessary to promote the legislative objective of providing greater oversight of the operations and finances of state authorities and to comply with the requirement in Public Authorities Law section 2879-a that the Comptroller issue regulations with respect to certain matters. While Public Authorities Law section 2879-a makes clear that the Comptroller may require certain categories of state authority contracts to be approved prior to becoming effective, these rules provide the procedural framework within which state authorities can comply with the new legal mandate. Specifically, these rules set forth the definitions and procedures necessary to implement this new requirement, including, as required by section 2879-a, the standards for determining the contracts subject to the Comptroller's approval and the criteria for approval of such contracts. The rules also provide for the filing with the Comptroller of exempt contracts and certain other contracts that were not approved by the Comptroller.

These rules will detail and streamline the process by which state authorities are able to comply with Public Authorities Law section 2879-a. Without these rules, state authorities subject to the law would be unaware of what materials they were required to submit to the Comptroller, in what manner they were to submit such materials, and the criteria by which they could obtain approval from the Comptroller. Moreover, these rules will provide notice to private businesses who currently contract with state authorities, or seek to do so in the future, that such state authority contracts may be subject to a new procedural framework and approval process.

4. Costs: (a) Costs to regulated parties. Costs to state authorities will be modest. Implementation will require procedural changes for transmitting the required contract documents and reports to the Office of the State Comptroller. This transmittal may also require state authorities to utilize systems developed by the Office of the State Comptroller, which may accommodate electronic submission of required documents. It is expected that these requirements can be met with existing resources with little additional cost. Additionally, costs for time delays directly resulting from obtaining Comptroller approval of eligible contracts appears to be modest. Currently, for state agencies, the turnaround for approving a contract is eleven days except for construction contracts where approval or disapproval is generally given within three days. It is not anticipated that current staffing limitations at the Comptroller's Office will cause the approval or disapproval to take the entire ninety day period. Finally, it should be noted that State Authorities will be given advance notice of which eligible contracts will be selected for review and the State Authority will have the responsibility to plan accordingly and keep their bidders informed.

(b) Costs to the agency. The Office of the State Comptroller will be required to develop protocols for the selection of contracts or categories of contracts for audit, develop and implement audit protocols, create documents which explain procedural instructions and requirements, develop or enhance automated systems, develop mechanisms for filing contracts which are exempt from review but are still required to be filed, and provide training to state authorities to facilitate the implementation of these rules. The Office of the State Comptroller has already taken steps to realign existing contract procedures to begin implementing its responsibilities under Public Authorities Law section 2879-a. It is expected that additional resources will be required to carry out such responsibilities upon full implementation of this new law. There will be no costs imposed on other state agencies or local governments.

5. Local Government Mandates: Public Authorities Law section 2879-a governs only state authorities, not local authorities. Where a state authority is entering into a contract with a local government, the contract may be subject to review and approval by the Comptroller, and the state authority is required to include in any such contract a clause providing that it is subject to the Comptroller's approval before it may become valid and enforceable. Beyond this limited situation, there will be no impact on local governments.

6. Paperwork: The rules require state authorities to file a new report with the Office of the State Comptroller, on an annual basis, to identify contracts eligible for Comptroller approval that the state authority reasonably anticipates entering into in the coming fiscal year. This is to assist state auditors in determining which contracts will be subject to the Comptroller's review. State Authorities need not include in the report contracts that are change orders to construction contracts in which the value does not exceed $100,000; agreements to extend the duration of a contract for which there is no change in contract amount; and exempt contracts. Additionally, the rules direct state authorities to submit all original contracts along with the complete procurement record to the Office of the State Comptroller for approval, where the state authority has received notice from the State Comptroller, as expanded upon below, that such contracts require prior approval. The procurement record consists of full documentation of the decisions made and the approach taken in the procurement process.

Next, the Comptroller is required to send written notice to the state authority of the contracts or categories of contracts that the Comptroller determines are subject to his or her approval. Such notification will also include instructions for submitting the contracts and the period of time during which the state authority is required to submit the contracts. Following the Comptroller's review, the Comptroller must also issue a written determination of the final approval or rejection of any contract submitted for approval.

Finally, for contracts that are specifically exempted from the Comptroller's approval under subdivision 3 of Public Authorities Law section 2879-a, state authorities must file copies of any such contract and any subsequent amendments thereto with the Office of the State Comptroller, and must also file an explanation of why such contract is exempt. Additionally, with respect to ''eligible contracts'' and ''eligible contract amendments'' that the Comptroller did not require be submitted for approval, the regulations require that state authorities file an executed copy of the contract and/or contract amendment with the Comptroller. Wherever possible, the Office of the State Comptroller will employ electronic means to receive and file documents.

7. Duplication: The Office of the State Comptroller is already authorized to review and approve contracts of certain state authorities, either pursuant to law or at the request of the state authority. The regulations expressly provide that the regulations do not diminish or impair such existing authority. As a result, in any case where such authority otherwise exists, the provisions in the regulations relating to the approval of certain state authority contracts will have no application, and therefore, there is no duplication. Accordingly, these rules will neither overlap nor conflict with contract submissions already made by state authorities.

Next, with respect to the annual reporting requirement contained in these rules, some public authorities are already required to report financial information and procurement activity (see 2 NYCRR 201.2). However, those requirements only apply to the ''procurement contracts'' of certain public authorities and only require such reporting on a retrospective basis (see Public Authorities Law § 2879; 2 NYCRR 201.1; 2 NYCRR 201.2). These proposed rules impose an additional obligation upon the state authority to report on a prospective basis on all expected ''eligible contracts,'' and ''eligible contract amendments'' as defined by the rules based upon criteria in Public Authorities Law section 2879-a. Pursuant to Public Authorities Law section 2879-a, the range of contracts and contract amendments that are ''eligible'' for the Comptroller's approval extends beyond procurement contracts and, therefore, this additional reporting requirement is necessary to fully assess what contracts and contract amendments should be subject to the Comptroller's review. Also, requiring state authorities to report on a prospective basis under these rules is crucial to the Comptroller's determination of which contracts should be subject to review.

8. Alternatives: Several alternative approaches were considered by the Comptroller after they were received as comments to the proposed rule from State Authorities. First it was suggested that the Comptroller limit his review solely to contracts for goods and services. This alternative was rejected because it was not in keeping with the plain language or the spirit of the underlying statutes. Further, it was suggested that only contracts specifically identified in an appropriation are subject for review. Again this alternative was discarded because it was not consistent with OSC's interpretation of the underlying law and not in keeping with the overall spirit of transparency advanced by such law. Next, it was suggested the Comptroller omit from his review amendments entered into after March 1, 2010 where the underlying contract was entered into prior to March 1, 2010. Legally an amendment is an agreement for consideration and therefore a contract. Accordingly, it is in keeping with the spirit of the underlying law to include such amendments since amendments may be used as a vehicle to avoid Comptroller review in perpetuity.

9. Federal Standards: None.

10. Compliance Schedule: It is expected that all state authorities should comply immediately upon the adoption of these rules.

Revised Regulatory Flexibility Analysis

No revision is necessary because there will be no substantial changes, if any, upon small businesses and local governments relating to the effect of the rule, the compliance requirements, compliance costs, the economic and technological feasibility, and adverse impact that were previously identified in the first Regulatory Flexibility Analysis for Small Businesses and Local Governments. Another press release will be issued and posted on the Comptroller's website regarding the rules revision in order to ensure the participation of small businesses and local governments.

Revised Rural Area Flexibility Analysis

No revision is necessary because there are no material changes, if any, upon the types and number of rural areas affected, the compliance requirements, the costs associated with the rule, and adverse impact upon rural areas that were previously identified in the proposed Rural Area Flexibility Analysis. Another press release will be issued and posted on the Comptroller's website regarding the rules revision in order to ensure the participation of entities in rural areas.

Assessment of Public Comment

Public Authorities Law § 2879-a directs the Comptroller to promulgate such rules and regulations as may be necessary to carry out his or her responsibilities under that section of law. This regulation is an exercise of, and consistent with, the Comptroller's authority in furtherance of such law.

The Office of the State Comptroller (OSC) received comments from the New York State Energy Research and Development Authority (NYSERDA); the Authority Budget Office (ABO); the Dormitory Authority of the State of New York (DASNY); the New York State Environmental Facilities Corporation (EFC); the Power Authority of the State of New York (NYPA); the Metropolitan Transportation Authority (MTA); the Niagara Frontier Transportation Authority (NFTA); the New York State Office of Temporary and Disability Assistance on behalf of the New York State Homeless Housing and Assistance Corporation (HHAC); the Executive Chamber of Governor David A. Paterson; the Battery Park City Authority (BPCA); the New York State Thruway Authority (NYTA); the State of New York Mortgage Agency (SONYMA); the New York State Housing Finance Agency (HFA) and its subsidiary the Affordable Housing Corporation; the State of New York Municipal Bond Bank Agency (MBBA) and its subsidiary the Tobacco Settlement Financing Corporation; the Empire State Development Corporation (ESDC); and the City University Construction Fund (CUCF), hereinafter collectively referred to as ''the responders''.

206.2(a). Several of the responders commented on OSC's proposed definition of ''competitive procurement.'' The comments generally expressed the opinion that such portion of the proposed definition that required state authorities to give actual notice of the procurement opportunity ''to all vendors known to the state authority to be capable of providing the requisite product, service or work to be performed'' was vague and possibly created an unreasonable duty on state authorities. OSC reviewed the comments and, upon further consideration, agrees that the failure to provide actual notice to all vendors known to the authority will not cause a procurement that is otherwise competitive to be considered non-competitive. Therefore, OSC has deleted the actual notice requirement from the definition of competitive procurement. However, OSC believes that a competitive procurement requires reasonable efforts be made to provide notice of the contract opportunity and that such notice be designed to solicit bids and proposals in response thereto. Accordingly, the revised section reflects that in all cases publication should be effected in the manner required by statute, or if there is no statutory publication requirement, that notice be published in the Procurement Opportunities Newsletter, or in a newspaper, periodical or journal reasonably designed to give notice of a contract opportunity to all offerers capable of providing the relevant goods or services. Such notice must be designed to solicit a responsive bid or proposal.

One responder also noted that its enabling statutes set forth certain exceptions to the requirement that a procurement opportunity be advertised in order to be deemed competitive. The responder asked that a similar exception be made in OSC's proposed definition of ''competitive procurement.'' OSC reviewed the statutes in question which provide for the exceptions and has concluded that it is both reasonable and appropriate to permit state authorities to satisfy the definition of competitive procurement by providing notice of the procurement opportunity through a method other than publication where there is express statutory authorization. Thus, OSC has amended the definition of competitive procurement to this effect.

206.2(b). Several of the responders expressed the opinion that the defined term ''contract'' should be limited to procurement contracts for the purchase of goods or services, and should not include contracts for the sale of anything by a state authority (i.e., revenue contracts or for the exchange of real property) or grant contracts. OSC does not read Public Authorities Law § 2879-a to limit the scope of the term ''contract'' in such manner and believes that the broader definition is in line with a plain reading of the statute as well as the underlying spirit and intent of the legislation.

206.2 (c). Some responders noted that a portion of the statutory language was missing from the definition of eligible contract. Specifically, 206.2 (c)(1) stated that an eligible contract would include a contract that ''shall be paid in whole or in part with monies appropriated by the State'' but did not contain the words ''for such contractual expenditure.'' These authorities contended that a regulation must mirror the statute, that such words had meaning and to fail to include such language was to ignore a ''crucial'' limitation to the Comptroller's pre-audit powers. We respectfully disagree. To suggest that the rules must contain identical language to the statute is an erroneous statement. If regulations were to simply mimic a statute, no regulations interpreting a statute would be necessary. That said, in our view, the statutory reference to ''for such contractual expenditure'' is clearly redundant to the phrase before it. Constitutionally, no payment can be made to a state authority, either directly or through a state agency with monies in the state treasury without an appropriation authorizing such expenditure (N.Y. Const. article VII section 7). The state authority upon receipt of such money must expend the money consistent with the purposes of the appropriation and can only use such money for contractual expenditures or any other expenditures where such expenditures are consistent with the purpose of the appropriation. Therefore, in any case where an authority properly utilizes monies received from a state appropriation for a contractual expenditure, such appropriation must have authorized such contractual expenditure. Furthermore, to suggest that the Comptroller may only review contracts where the appropriation specifically identifies the contract to be let is in direct contravention to the spirit of transparency underlying this law. Additionally, when monies are appropriated to a state agency which by law authorizes payment of such monies to a state authority, we believe such monies are, for purposes of the statute, moneys appropriated to a state authority. We have added language to this section to clarify this point.

206.2(d). Several responders submitted comments related to the definition of ''eligible contract amendment.'' In general, the responders opined that amendments or change orders for pre-March 1, 2010 contracts resulting in an insignificant increase of the base contract should not be considered to make such amendment eligible for

purposes of these rules. We believe that it is the intent of the law to permit the Comptroller to review any amendment when the contract as amended will exceed the $1 million threshold. Furthermore, this approach is consistent with the Comptroller's longstanding approach when amendments to state agency contracts are subject to Comptroller approval.

Several responders also suggested that the statute cannot apply to amendments where the original contract was executed before March 1, 2010 because this would impair the contractor's constitutionally or statutorily protected rights under the contract. We believe this argument is incorrect. While contractors clearly have constitutionally or statutorily protected rights under existing contracts; contractors have no constitutionally or statutorily protected rights under as yet unexecuted amendments to contracts.

206.2(f)(1). Several responders requested that OSC define the first category of exempt contracts under subdivision 3 of Public Authorities Law § 2879-a (''contracts. . . for the issuance of commercial paper or bond indebtedness. . . .''), to include all contracts ''related to'' or ''in connection with'' the issuance of commercial paper or bonded indebtedness. These responders also asked for further clarification on what specific agreements would fall within this exemption. While OSC does not believe that the statutory exemption was intended to apply generally to all contracts merely ''related to'' or ''in connection with'' the issuance of commercial paper or bonded indebtedness, OSC has amended this definition to list specific agreements which OSC believes do and, conversely, do not fall within the exemption.

206.2(g)(2). Certain responders challenged the inclusion of bond proceeds ''where such bonds shall be paid in whole or in part with monies from the state …'' in the proposed regulations' definition of the term ''monies appropriated by the state.'' While the responders cited Matter of Smith v Levitt (30 NY2d 934 [1972]) for the proposition that bond proceeds are not money under the State's control, their reliance on that case is misplaced. There, the Court held that payments made by an authority from the proceeds of sales of its bonds were not subject to the Comptroller's pre-audit under NY Const. article V, section 1, which generally applies only to payments by state agencies. The Court's holding is inapplicable to the instant matter because there is no implication of the Comptroller's pre-audit function under NY Const. article V, section 1. Rather, these rules - and the scope of the definitions contained therein - are premised on two factors: (1) the Legislature's inherent ability to restrict the contracting power of state authorities since all state authorities are creatures of legislation in the first instance; and (2) the Comptroller's existing constitutional authority to ''supervise the accounts of public corporations'' under NY Const. article X, section 5. Accordingly, the Legislature has chosen to restrict the activities of state authorities by subjecting certain state authority contracts to the discretionary review and approval by the Comptroller. Further, OSC believes that where state authority contracts are funded with the proceeds of bonds that are ultimately to be paid at least in part with monies appropriated by the State that such contracts are, in any meaningful sense, funded with state appropriation and, therefore, such contract falls within the ambit of Public Authorities Law § 2879-a.

The MTA noted that it often issues bonds that are to be repaid with certain tax and fee revenues that the Legislature has dedicated to the MTA through broad, general appropriations and it was their belief that any contracts deriving from such appropriation would not be subject to Public Authorities Law § 2879-a. OSC disagrees with this conclusion. The statutory language merely requires that the monies appropriated by the state be used for a contractual expenditure. The fact that such appropriation may be in the form of a general appropriation and is to be repaid by tax and fee revenues does not alter the fact such contracts are within the purview of Public Authorities Law section 2879-a and may be reviewed by the Comptroller should he or she choose to exercise his or her discretion in such manner.

206.2(i). One responder raised the concern that OSC's definition of ''single source'' was vague and inconsistent with the definition contained in the New York State Procurement Guidelines established by the State Procurement Council. OSC has reviewed such definition and believes it is clear and consistent not only with the State Procurement Guidelines, but also with the definition applied to state agencies in the State Finance Law (see State Finance Law § 163[h]; New York State Procurement Guidelines, at pp. 9, 45 [September 2009]).

206.2(l). The ABO informally commented that the definition of ''state authority'' needed further refinement to exclude from such definition authorities in which the governor's appointees are made specifically upon the recommendation of local officials. As this better represents the meaning of ''state authority'' within the Public Authorities Law such change was implemented.

206.2(n). One responder commented that the regulations should require the Comptroller's written determination regarding the final approval or disapproval of a contract to include the specific criteria relied on in the event of disapproval. OSC recognizes that a detailed explanation concerning the reasons for the disapproval of a contract will facilitate the improvement of an authority's contracting in the future. Therefore, in the event of the disapproval of a contract, OSC will be available to answer questions and intends to provide each state authority with all available information regarding the reasons for the disapproval. OSC does not feel, however, that an amendment to the definition of ''written determination'' is necessary.

206.3. Some responders believe that it is not feasible to require authorities to estimate and report on anticipated eligible contracts prior to the start of each authority's fiscal year. One responder also stated that it was burdensome to require the authorities to notify OSC of significant changes to a previously submitted report within seven days of the identification of significant change. OSC recognizes that efforts on the part of the state authorities will be required to implement new contracting procedures based on the enactment of Public Authorities Law § 2879-a and the regulations promulgated by the Comptroller based on the new law. However, OSC believes that the timeframe imposed with respect to the submission of annual reporting requirement is reasonable. One responder suggested periodic updates to the annual reports. While OSC appreciates the suggestion it believes that notification of additions and significant changes better represents the goal of OSC in having the most current and up-to-date information regarding the eligible contracting activities of state authorities. In deference to the responders' concerns of time constraints, the rules have been revised to extend the time to notify the Comptroller of such additions and significant changes. Specifically, state authorities will now have a maximum of thirty days to notify the Comptroller of such changes, provided that, in no event shall the notice be less than ten days prior to the release of a solicitation in the case of competitive procurement or the execution of a contract in the instance of a noncompetitive award relating to such changes.

With respect to the additional comments on section 206.3, OSC believes that certain amendments and/or clarifications are required. More specifically, OSC agrees with the comment that, to the extent that certain state authorities already submit eligible contracts to the Comptroller for approval pursuant to an existing law or resolution, annual reporting may be waived. Therefore, OSC has amended section 206.3 to provide for such waiver.

Finally, with respect to the comment that, ''significant change'' should be further defined for purposes of the required updates of the annual reports, OSC has revised this section to clarify that updates will be required when there are additions, deletions and significant changes to the annual report. Further, the term significant change has been defined as any such change that affects the method of award or increases the value of the contract of a contract amendment by more than twenty-five percent.

206.4. Some responders commented that, following the authorities' submission of its annual report, there should be a more defined timeframe for the Comptroller's notification of which eligible contracts and eligible contract amendments, if any, shall be subject to the Comptroller's approval. While OSC recognizes that it is important for authorities to know what contracts, if any, will be subject to the Comptroller's approval at the earliest possible instance, it is not feasible at this time for OSC to impose a specific timeframe on its notification process, but the regulations have been amended to indicate OSC's intent to provide notice as soon as practicable.

Additionally, one responder opined that notice should not be effective for a contract once bids or proposals have been received by the

state authority. We do not agree, and note that, pursuant to the underlying statute, the Comptroller can make a determination to review an eligible contract or eligible contract amendment any time prior to the execution of such eligible contract or eligible contract amendment. That said however, again, where the Comptroller determines that certain contracts or categories of contracts of an authority shall be subject to the Comptroller's approval, OSC will provide as much advance notice as possible in each situation.

With respect to the criteria that the Comptroller will use to determine which eligible contracts shall be subject to the Comptroller's review, some responders commented that, since Public Authorities Law § 2879 already sets forth what must be in the state authorities procurement guidelines, compliance with such provision of law should be the controlling factor rather than the more general ''content and adequacy of the state authority's existing procurement guidelines'' as these regulations currently anticipate. In reviewing the ''content and adequacy of the state authority's existing procurement guidelines'' as one of the determinative criteria, OSC intends to ensure compliance with Public Authorities Law § 2879 as one factor in its review; however, OSC will also be reviewing such guidelines in a substantive and operative nature and does not believe it is necessary to limit its review solely to technical compliance with Public Authorities Law § 2879. OSC does take note, however, of the additional comment that it would be efficient for OSC to review and comment on the state authority's existing procurement guidelines at the time that they are first submitted as part of the authorities' PARIS reporting, rather than during the review of a particular contract where the authority is awaiting approval.

206.5(a). One authority stated that in certain situations filing a complete copy of an eligible contract or eligible contract amendment, which the Comptroller has elected to review, would be unduly burdensome and that many of the contract documents would be irrelevant to the Comptroller's review. OSC believes that is the intent of the underlying law to achieve the maximum amount of transparency in the state authority contracting process; however, we agree that in some instances some contract documents may be unnecessary to achieve a meaningful review of the contract or contract amendment. Accordingly, we have revised the proposed rules to allow for filing of less than the full record, at the Comptroller's discretion. Further guidance will be given in the State Authorities Contract Manual or the written notice provided to the state authority.

206.5(b). Some responders commented that the vendor responsibility certification requirement - as applied to ''significant subcontractors'' - was too broad and that it was unclear when a subcontractor would be considered ''significant,'' therefore triggering the certification requirement. These responders also commented that it might be impossible to provide such a certification in many instances because subcontractors are not always known to the vendor or the state authority at the time of award. OSC agrees that ''significant'' needs further clarification and has amended the regulation to provide certain criteria that would render a subcontractor to be deemed significant. Further, OSC has amended this paragraph to require a vendor responsibility certification for a significant subcontractor only when such significant subcontractor is known at the time of the contract award.

206.5(d). Several responders commented that the 90-day period within which the Comptroller may consider a contract subject to the Comptroller's approval could result in higher priced bids and other added contracting costs. These responders also suggested that there be put in place an expedited review process where the 90-day period would result in a ''significant'' increase in price. Public Authorities Law § 2879-a expressly calls for a 90-day period and OSC notes that this 90-day period is the maximum amount of time that a state authority would have to wait for approval and validation of the contract. OSC's turn around time for contracts is typically much shorter and, in the event that a state authority expresses a reasonable need for an expedited review, OSC will work with the state authority to accommodate such need in every way possible.

206.6(a). With respect to the criteria for approval of a contract by the Comptroller, as mentioned in the discussion of section 206.4, one responder commented that OSC should review the reasonableness of the state authority's procurement procedures prior to receiving any eligible contract when such guidelines are received as part of PARIS reporting. Note, OSC does intend to work with state authorities on best practices on an ongoing basis so that state authority guidelines will reflect appropriate procurement standards. However we believe the reasonableness of such procedures remains a proper criterion and do not believe that any change is warranted to the regulations.

Another responder commented that, when the contract involves the disposal of personal or real property by a state authority, the standard of review should not generally be ''the reasonableness of the state authority's procurement procedures'' but, rather, should be more narrowly tailored to the procedures outlined in article 9, title 5-a of the Public Authorities Law which governs the disposal of property by public authorities. OSC notes that one of the criteria for approval of contracts subject to the Comptroller's review is ''compliance with all applicable laws.'' Accordingly a contract for the disposal of state authority property subject to Comptroller approval will certainly be reviewed for compliance with article 9, title 5-a of the Public Authorities Law, and OSC will also consider the overall reasonableness of the authority's procurement procedures for such contract - to the extent that such procedures may be relevant.

206.7. Two responders commented that the provision in subdivision 3 of Public Authorities Law § 2879-a, which requires state authorities to file copies of certain contracts, only applies to the contracts described in paragraph (f) of such subdivision, and that the contracts described in paragraphs (a) through (e) are not subject to the filing requirement. OSC does not agree with this interpretation of the statute. Indeed, the expressed legislative intent of the statute, to wit, to promote transparency in the contracting operations of state authorities, as well as a plain reading of subdivision 3 indicates that the Legislature intended to subject all of the exempt categories of contracts to the filing requirement. Furthermore, the Comptroller has the discretion to require the filing of any state authority contract pursuant to the Comptroller's existing constitutional authority to ''supervise the accounts of public corporations'' (NY Const. article X, section 5); and, therefore, even if OSC agreed with this narrow reading of the statute which, again, OSC does not, the argument would be moot.

One responder commented that, in certain instances, the filing of a complete copy of a state authority contract would be unduly burdensome and unnecessary to achieve the spirit and purpose of Public Authorities Law § 2879-a. OSC recognizes that the filing of a complete copy of a contract, along with all relevant attachments and referenced documents, may create an unreasonable burden on state authorities in some situations. Therefore, where OSC is requiring the filing of certain contracts and is not otherwise prohibited by the language of Public Authorities Law § 2879-a (3) which expressly requires state authorities to file ''copies of any. . . [exempt] contract'' (emphasis added), OSC will consider whether the filing of something less that a full copy of the contract would achieve the purpose of Public Authorities Law § 2879-a and the goals of OSC. OSC will further define in what circumstances a summary filing would be acceptable in the forthcoming State Authorities Contract Manual.

Confidential Information. One responder commented that the rules should reflect a procedure to protect against disclosure of confidential information, including trade secrets, contained in its contracts. OSC already has a formal procedure in place pursuant to the Freedom of Information Law (FOIL) that would apply to the release of any information contained in state authority contracts in OSC's possession. More specifically, a business entity is entitled to designate information in OSC's possession that it feels is proprietary or confidential in nature. Once OSC receives a request under FOIL, the contract is reviewed to see if any portions of it have been designated as confidential or proprietary. If so, the business entity is contacted for justification to support the designation. OSC review the justification it to determine if it is sufficient to withhold the information. Assuming that the justification is sufficient, OSC will redact the relevant information. If the justification is not sufficient, OSC will contact the business entity again to discuss, or obtain additional justification. OSC cannot accept blanket assertions, or requests for confidentiality that are not statutorily justified. Accordingly, OSC feels that this procedure amply meets the concerns expressed regarding the potential disclosure of confidential or proprietary information contained in certain state authority contracts.

Compliance with the State Administrative Procedure Act. One respnder expressed a concern that OSC's Rule Impact Statement (RIS) was not in compliance with the State Administrative Procedure Act (SAPA) to the extent that the RIS addressed the potential cost impacts of the proposed rule on state authorities. The responderspecifically commented that the 90-day waiting period to obtain the Comptroller's approval may delay the start of certain projects and, therefore, cause significant added costs. Initially, OSC again wants to again emphasize that Public Authorities Law § 2879-a expressly provides for a 90-day review period and that the 90-day period is the maximum amount of time that a state authority would have to wait for approval of a contract; this period is not a ''minimum'' length of time as the authority stated in its formal comments. With respect to the other potential administrative costs raised by the responder and alternatives considered, OSC feels that any such costs imposed by this rule were adequately addressed in the initial draft of the RIS, as well as in certain amendments OSC is making to this rule based on the formal comments received by the authorities. However, to avoid any confusion, OSC has revised the RIS to consider the issues raised by the authority with respect to costs and alternatives considered.

Constitutionality. One responder called into question the constitutionality of the pre-audit authority created under Public Authorities Law section 2879-a. OSC disagrees with such interpretation, but agrees with the responder that this is not the appropriate forum to deal with questions of constitutionality of the underlying statute.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00008-A
Filing No. 839
Filing Date: 2010-08-10
Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00008-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-09-00003-A
Filing No. 844
Filing Date: 2010-08-10
Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the October 14, 2009 issue of the Register, I.D. No. CVS-41-09-00003-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-09-00004-A
Filing No. 841
Filing Date: 2010-08-10
Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the non-competitive class.

Text or summary was published in the October 14, 2009 issue of the Register, I.D. No. CVS-41-09-00004-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-09-00005-A
Filing No. 843
Filing Date: 2010-08-10
Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 14, 2009 issue of the Register, I.D. No. CVS-41-09-00005-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00015-A
Filing No. 847
Filing Date: 2010-08-10
Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00016-A

Filing No. 840

Filing Date: 2010-08-10

Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00016-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00017-A

Filing No. 845

Filing Date: 2010-08-10

Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00017-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00018-A

Filing No. 842

Filing Date: 2010-08-10

Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00018-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00019-A

Filing No. 850

Filing Date: 2010-08-10

Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00019-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00020-A

Filing No. 848

Filing Date: 2010-08-10

Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00020-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00021-A

Filing No. 846

Filing Date: 2010-08-10

Effective Date: 2010-08-25

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00021-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-09-00022-A

Filing No. 849

Filing Date: 2010-08-10

Effective Date: 2010-08-25

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

Action taken: Amendment of Appendix 1 and Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt class and to delete a position from the non-competitive class.

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. CVS-51-09-00022-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Museum Collections Management Policies

I.D. No. EDU-26-10-00002-E

Filing No. 837

Filing Date: 2010-08-10

Effective Date: 2010-08-10

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

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

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided), 217(not subdivided), 233-aa(1), (2) and (5); and L. 2008, ch. 220

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

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

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

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

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

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

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

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

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

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

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting, and readopted as an emergency rule at the March, April, June, July, October and December 2009 and the February, March and May 2010 Regents meetings. A Notice of Emergency Adoption and Proposed Rule Making was published in the *State Register* on January 7, 2009. Notices of Revised Rule Making were published in the *State Register* on August 26, 2009 and January 20, 2010. The Notice of Emergency Adoption and Proposed Rule Making expired on April 7, 2010. A new Notice of Emergency Adoption and Proposed Rule Making has been published in the June 30, 2010 *State Register* with this Statement.

The proposed amendment is consistent with generally accepted professional and ethical standards within the museum and historical society communities. State Education Department staff continue to work with the Legislature and with museum constituents to develop revised standards for museum deaccessioning. The Department participated in a January 14, 2010, roundtable discussion in New York City organized by the New York State Assembly. However, a consensus has not been reached with respect to the revised standards, and the Department believes it is necessary to continue the emergency rule that has remained in effect since December 19, 2008.

Pursuant to State Administration Procedure Act § 202(1)(a), a rule may not be adopted until after 45-days from publication of a Notice of Proposed Rule Making in the *State Register*. The Notice of Proposed Rule Making was published in the *State Register* on June 30, 2010 and the 45-day period expires on August 16, 2010. However, the emergency rule adopted at the May Regents meeting is only effective for 60 days and will expire on August 9, 2010. No Regents meetings are scheduled in August and the next scheduled Regents meeting after the July Regents meeting is September 13-14, 2010. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the July Regents meeting to readopt the rule, effective August 10, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a museum or historical society by enumerating the specific criteria under which an institution may deaccession an item or material in its collection, remove the option allowing an institution to designate a structure as a collections item but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008, and specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above.

Emergency action is also necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule.

It is anticipated that the emergency rule will be presented for permanent adoption at a subsequent Regents meeting, after publication of a new Notice of Proposed Rule Making in the *State Register* and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

Subject: Museum collections management policies.

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

Text of emergency rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective August 10, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed October 8, 2010:

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

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective August 10, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed October 8, 2010:

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

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

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

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

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

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

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

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

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision,* and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (*vi*) of this paragraph;

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

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

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

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

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

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

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

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

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

This notice is intended to serve 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-26-10-00002-EP, Issue of June 30, 2010. The emergency rule will expire October 8, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

Education Law section 233-aa, as added by Chapter 220 of the Laws of 2008, enacts provisions governing the ownership and management of properties owned by or lent to museums, requires that the acquisition of property by a museum pursuant to section 233-aa must be consistent with the mission of the museum, and specifies that proceeds derived from the sale of any property title to which was acquired by a museum pursuant to section 233-aa shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

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

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

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

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

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

4. COSTS:

(a) Costs to the State: None.

(b) Costs to local governments: None.

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

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum chartering database as of November 2008), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

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

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

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

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

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

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

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

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

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

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

3. COMPLIANCE COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

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

Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Health

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the NYS *Register.*

Rate Methodology for Non-Public Hospitals to Ensure Access for All Medicaid Patients Requiring Language Assistance

I.D. No.	Proposed	Expiration Date
HLT-31-09-00013-P	August 5, 2009	August 5, 2010

Higher Education Services Corporation

NOTICE OF ADOPTION

New York Higher Education Loan Program (NYHELPs)

I.D. No. ESC-25-10-00007-A
Filing No. 838
Filing Date: 2010-08-10
Effective Date: 2010-08-25

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

Action taken: Amendment of Part 2213 of Title 8 NYCRR.

Statutory authority: Education Law, section 691(10)

Subject: The New York Higher Education Loan Program (NYHELPs).

Purpose: Amend several provisions of the regulation.

Substance of final rule: 1. Section 2213.2. Borrower eligibility requirements. The amendment corrects erroneous references to subdivisions within the section and clarifies the reference to title IV loans.

2. Section 2213.5. Due diligence in originating, disbursing, and servicing program loans. The amendment (a) clarifies that a discharge may only be granted based upon the death or total and permanent disability of a student while that student is enrolled in college; (b) provides that a request for discharge may also be based on the death of the borrower while on active military duty to correspond with section 2213.20(e)(2); and (c) provides for disbursements in unequal installments to accommodate differences in college payment deadlines.

3. Section 2213.6. Application content. The amendment conforms the requirements contained in the regulation to federal regulation by reference.

4. Section 2213.10. Default fees. The amendment (a) provides that the corporation will determine a process for transfer of funds when payment of the college default fee is made by an entity other than the college; and (b) clarifies processing of the borrower default fee; no substantive change was made except to permit deposits into a separate account at SONYMA rather than the Corporation.

5. Section 2213.13. College certification requirements. The amendment (a) clarifies that when a college certifies student eligibility, such certification includes that the student is making satisfactory academic progress; and, (b) adds two additional certifications, which are: (i) the program loan doesn't exceed the student's unmet need and is within the annual loan limit; and, (ii) a program loan for a prior academic term doesn't exceed the student's unmet need, is within the annual loan limit and doesn't supplant or reimburse institutional aid.

6. Section 2213.14. Processing program loan proceeds. The amendment: (a) permits program loans to be disbursed in unequal disbursements; (b) clarifies when the college must credit the loan to the student's account; and (c) clarifies the process and requirements for a program loan for a prior academic term.

7. Section 2213.15. Processing program loan refunds. The amendment clarifies that any refund of fees will be determined for each disbursement rather than the entire program loan.

8. Section 2213.17. Disclosure requirements for participating lenders. The amendment conforms the requirements contained in the regulation to federal regulation by reference and clarifies the process for disseminating and collecting the required disclosure forms.

9. Section 2213.20. Program loan repayment. The amendment will make deferments available to all borrowers in active duty status rather than limit this benefit to student borrower is active duty status. The amendment will also make deferments available based on the death of a borrower on active military duty in the event the borrower does not qualify for discharge. The rule also clarifies the requirement for a modified payment plan.

10. Section 2213.28. Incorporation by reference. The amendment updates the regulation to include version 2 of both the program's underwriting manual and the program's default avoidance and claim manual.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2213.2, 2213.5, 2213.6, 2213.10, 2213.13, 2213.14, 2213.15, 2213.17, 2213.20 and 2213.28.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Supervising Attorney, New York State Higher Education Services Corporation, 99 Washington Avenue, Room #1315, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.org

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

A revised regulatory impact statement, regulatory flexibility analysis, Rural Area Flexibility Analysis and Job Impact Statement are 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, RFA, RAFA and JIS are accurate and the revisions to the proposed rule do not necessitate modification of the above mentioned.

Assessment of Public Comment

The New York State Higher Education Services Corporation (HESC) is authorized, pursuant to New York State Education Law § 691(10), to adopt rules and regulations implementing NYHELPs.

HESC received comments following the June 23, 2010 publication of the 'Notice of Proposed Rulemaking' in the State Register. All substantive comments received are considered and discussed below.

1. Credit Criteria Requirement

Comment: The regulation contains a requirement that non-student borrowers and primary cosigners have at least two years of credit history and at least three trade lines; otherwise the application is denied for insufficient credit. The requirement of three trade lines fails to consider older borrowers with little debt and high FICO scores, which are all excellent applicants that should qualify for a NYHELPs loan. [Underwriting Manual, § III(A)(2)(iv), page 4]

Response: HESC has amended this provision to eliminate the trade line requirement.

2. Income Verification Requirement

Comment: The regulation contains a requirement that both the current year's and the prior year's income history of each applicant (except a student borrower) must be verified. This requirement has caused an inordinate delay in processing the loan resulting in loan cancellation. The current year's income history is sufficient to evaluate an applicant's income. [Underwriting Manual, § III(D)(2), page 5]

Response: HESC has amended this provision to require that only the current year's income history of each applicant (except a student borrower) be verified.

3. Employment Verification Requirement

Comment: The regulations require that the holder/servicer confirm an applicant's employment by telephone and that the pay stub matches the information provided in the application. The requirement that the holder/servicer call every employer delays loan processing and is unnecessary to verify employment status given the documentation provided. [Underwriting Manual, § III(E), page 5]

Response: HESC has amended this provision to require that the holder/servicer verify employment as directed by the Corporation or if the holder/servicer suspects fraud.

Office for People with Developmental Disabilites

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Conforming Amendments to Chapter 262 of the Laws of 2010

I.D. No. PDD-34-10-00007-P

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

Proposed Action: This is a consensus rule making to amend section 624.8(c)(3) of Title 14 NYCRR.

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

Subject: Conforming amendments to Chapter 262 of the Laws of 2010.

Purpose: Extends the deadline for requests for release of records pertaining to allegations of abuse.

Text of proposed rule: Section 624.8(c)(3) is amended as follows:

(3) Agencies are required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007, if the written request is submitted on or before December 31, [2010] *2012*.

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

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

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

Additional matter required by statute: 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.

Consensus Rule Making Determination

In conformance with Jonathan's Law, existing OPWDD regulations require the release of records pertaining to allegations of abuse in specified circumstances. A provision of the existing regulations requires the release of records for allegations which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007, if the written request is submitted on or before the deadline of December 31, 2010.

Chapter 262 of the Laws of 2010 extended this deadline to December 31, 2012. OPWDD is proposing revisions to regulations that incorporate this change of deadline.

OPWDD has determined that due to the nature and purpose of the amendment no person is likely to object to the rule as written.

Job Impact Statement

A Job Impact Statement for this amendment is not submitted because it is apparent from the nature and purposes of the amendment that it will not have an adverse impact on jobs and/or employment opportunities. It is anticipated that providers will generally utilize existing staff to accomplish any tasks related to this amendment.

Public Service Commission

NOTICE OF ADOPTION

Amendment of Tariff Filings to Allow for Participation by the Service Classes 1, 2 and 7 in the Rider U Program

I.D. No. PSC-22-10-00002-A

Filing Date: 2010-08-06

Effective Date: 2010-08-06

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

Action taken: On 8/6/10, the PSC adopted, as a permanent rule, an order approving a tariff change allowing for the inclusion of Service Classes 1, 2 and 7 in Consolidated Edison Company of New York, Inc.'s Rider U Distribution Load Relief Program effective May 14, 2010.

Statutory authority: Public Service Law, sections 30, 65 and 66

Subject: Amendment of tariff filings to allow for participation by the Service Classes 1, 2 and 7 in the Rider U Program.

Purpose: To adopt as a permanent rule a tariff filing to allow participation by the Service Classes 1, 2 and 7 in the Rider U Program.

Substance of final rule: The Commission, on August 6, 2010, adopted, as a permanent rule, an order approving a tariff change allowing for the inclusion of Service Classes 1, 2 and 7 in Consolidated Edison Company of New York, Inc.'s Rider U Distribution Load Relief Program effective May 14, 2010.

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.

(10-E-0169EA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Revenue Decoupling Mechanism

I.D. No. PSC-34-10-00002-P

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

Proposed Action: The Commission is considering a petition and a tariff filing by Niagara Mohawk Power Corporation (NiMo) to allow NiMo to revise the groupings for which the revenue resulting from their Revenue Decoupling Mechanism is recovered/credited.

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

Subject: Revenue Decoupling Mechanism.

Purpose: To permit a more fair and proper reconciliation of revenue pursuant to a Revenue Decoupling Mechanism.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition and a tariff amendment filed by Niagara Mohawk Power Corporation d/b/a National Grid (NiMo or the Company) which would allow the company to revise the groupings for which the revenue resulting from its Revenue Decoupling Mechanism is recovered/credited. The Company is proposing to maintain the six separate groupings for the purposes of calculating the revenue to be recovered/refunded but to combine the results by service classification for purposes of calculating the resulting rates per therm. The Commission may adopt, reject, or modify, in whole or in part, NiMo's petition and tariff amendment. The Commission may also approve similar modifications to other gas and electric utilities' RDM mechanisms.

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

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

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

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

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

(08-G-0609SP5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program

I.D. No. PSC-34-10-00003-P

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

Proposed Action: The Commission is considering the modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program.

Statutory authority: Public Service Law, sections 2, 5, 64, 65, 66 and 67

Subject: The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program.

Purpose: The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program.

Substance of proposed rule: The Public Service Commission (Commission) is considering the modification of Central Hudson Gas & Electric Corporation's low-income program called the Enhanced Powerful Opportunities Program (EPOP). The funding for EPOP was recently approved by the Commission in Cases 09-E-0588 and 09-G-0589. A collaborative of interested parties was mandated to determine if EPOP should be modified, and if so, the implementation of any such modifications. The Commission may grant, deny or modify, in whole or in part, the recommendations of the EPOP collaborative, and may also consider related

matters. The Commission may apply modifications developed here to the low income programs of other utilities as well.

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-G-0589SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-34-10-00004-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed Henry Phipps Plaza North, Inc. to submeter electricity at 331 East 29th Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Henry Phipps Plaza North, Inc. to submeter electricity at 331 East 29th Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Henry Phipps Plaza North, Inc. to submeter electricity at 331 East 29th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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.

(10-E-0366SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of a Contract for $250,000 in Tank Repairs That May be a Financing

I.D. No. PSC-34-10-00005-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 a contract between Forever Wild Water Company and Preferred Tank and Tower, Inc. for $250,000 in repairs to a 300,000 gallon water tank is a financing and whether PSC approval is required.

Statutory authority: Public Service Law, section 89-f

Subject: Approval of a contract for $250,000 in tank repairs that may be a financing.

Purpose: To decide whether to approve a contract between the parties that may be a financing of $250,000 for tank repairs.

Substance of proposed rule: By letter dated July 27, 2010, Forever Wild Water Company sought approval for entering into a contract for repairs to its 300,000 water tank to be performed by Preferred Tank and Tower, Inc. for $250,000. The Commission is considering whether the contract is a financing and whether to grant or deny, in whole or in part, the contract offered to Forever Wild Water Company to pay the aforementioned amount, pay $10,000 to Preferred Tank and Tower, Inc., and to make monthly payments of $1,000 per month for 20 years.

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

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

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

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

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

(08-W-0555SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program

I.D. No. PSC-34-10-00006-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 modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program.

Statutory authority: Public Service Law, sections 2, 5, 64, 65, 66 and 67

Subject: The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program.

Purpose: The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program.

Substance of proposed rule: The Public Service Commission (Commission) is considering the modification of Central Hudson Gas & Electric Corporation's low-income program called the Enhanced Powerful Opportunities Program (EPOP). The funding for EPOP was recently approved by the Commission in Cases 09-E-0588 and 09-G-0589. A collaborative of interested parties was mandated to determine if EPOP should be modified, and if so, the implementation of any such modifications. The Commission may grant, deny or modify, in whole or in part, the recommendations of the EPOP collaborative, and may also consider related matters. The Commission may apply modifications developed here to the low income programs of other utilities as well.

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-E-0588SP2)